THE SOCIAL CONTRACT

Vol. VII, No. 4 Summer 1997

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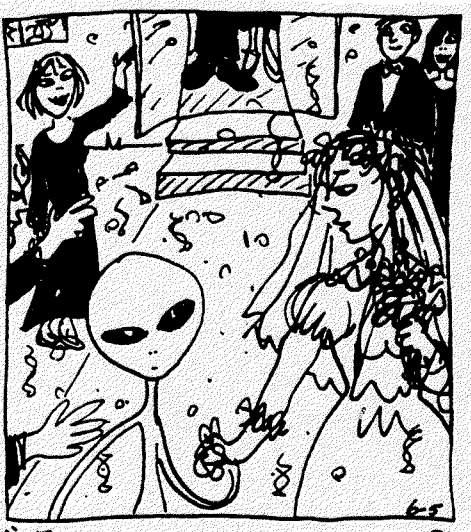
Claims for asylum and refuge have become another door to open immigration



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About The Social Contract

The English philosopher John Locke, whose thinking helped inspire the American revolution, said that society should be governed by an understood set of values he termed "the social contract." Under the social contract, governments have obligations to their citizens, and citizens have responsibilities to society.

Most great public issues are basically moral and ethical ones. What is the right thing to do? How do we decide what we think is right? When "rights" collide, which ones take precedence? The concept of the social contract helps us sort out the difficult issues confronting American society today and helps us find balance.

Each quarter, **The Social Contract** journal examines trends, events and ideas that could unravel America's delicate social fabric. Key topics addressed by this journal:

- *Human population issues, including absolute size, rate of growth and distribution.* Do cherished American ideals prosper or suffer through further population growth?
- *Immigration issues.* In order to best facilitate meeting the highest goals of the American people, (1) how many immigrants should we admit? (2) who should be admitted, and (3) how can we humanely enforce the rules?
- *Language, assimilation, culture and national unity considerations.* What are the shared values necessary to the maintenance of our social contract?
- *The balance of individual rights and civic responsibilities.* Since the previous issues are so often framed in terms of rights, what are the balancing obligations?
- *Other nations' efforts at guarding or creating their own social contracts.* What practical insight can be gained from observing the failures and successes in nation-building by other societies?

The Social Contract explores these complex and interrelated issues with articles varying greatly in outlook and philosophy in the attempt to further vigorous public debate.

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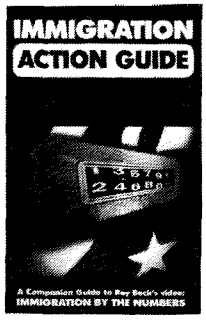

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Letter from the editor

Asylum should be *Temporary*

Refuge and asylum are the hardest parts of the immigration policy question. One wants to be generous, but not be taken advantage of.

In theory, refugees have the most pressing cases and are the most in need of relief. I once proposed that they have first claim on immigration slots. An older and wiser colleague opined, "If only refugees can come, then everyone will be a refugee." He proved more right than I care to admit, for refugee and asylum claims have become another door to migration. If one door is closed, try another!

There are something like 20 million persons registered as refugees with the U.N. High Commissioner for Refugees. These are (by definition) people living outside of their country of origin, and hoping for admission to a third country (not the one they are currently in). The U.N. says another 40 million persons are internally displaced within their own countries, technically not refugees. Finally, there are asylees: persons who have made it (often illegally) from their own country into another where they are applying for residence. Obviously there are limits to how many our — or any —country can take.

When, in 1979, Senator Ted Kennedy introduced what became the Refugee Act of 1980, the immigration reform movement was still just a-borning. The Federation for American Immigration Reform had just been organized and had neither the strength nor resources to play a significant role in the debate. None of today's other reform groups existed.

In this vacuum, Congress proceeded to adopt the U.N. definition of a refugee as someone fleeing because of "persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion." There was no concept in the legislation that the social, political, economic or environmental disruptions that made people flee might be temporary, after which they could return home; no notion that in returning home they might help to address the disruptive conditions there; nor was there any concern about those left behind to live with the conditions that the refugee might have helped to change.

Another essential concept is that our policy of high *legal* immigration is one of the major causes of growing claims for asylum and refuge. With high numbers of green-card holders there is a huge flow back to the country of origin — away from us, and hence not easily visible — of remittances, photos of the new clothes or car, offers of housing while seeking a job, etc. All of these encourage others to come — legally if there is a spot, but if not, illegally — or under the "third pathway" which we highlight in this issue of our journal: via a claim for asylum or refuge.

Our immigration policies have led us to the corrupt system that several authors describe in our opening section on the abuse of asylum and refugee status. A number of reforms are possible, but one of the most effective would be to make all grants of asylum and refuge *temporary*, and not convertible to permanent status. The understanding from the outset would be that when things settle down sufficiently for a safe return, individuals would go home to help their own countries and societies make progress. The State Department could make these status determinations. This, in fact, would be consistent with the U.N. policy on refugees: that the main feasible solution, given the numbers involved, is repatriation.

Under this concept, instead of admitting asylees and refugees and all of their offspring onto the thousandth generation, we would help for the short term, and then free up the spot for someone else who needs temporary succor. This would help more people in the long run and at the same time discourage the illegitimate use of this "third pathway" to migration.

In the bigger picture and in the longer run, we need to think of Lech Walesa and Vaclav Havel as examples. Either of them would have been readily accepted as an asylee or refugee, and perhaps even feted with a tickertape parade to congratulate ourselves on our magnanimity. But they chose to stay and fight for what they believed in, and made a better life for themselves and their countrymen in this and future generations. They should be our role models.

JOHN H. TANTON
Editor and Publisher

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Letters from our readers

THE SOCIAL CONTRACT Forum

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Editor:

I believe wholeheartedly in your point of view. The projection of population for this country in fewer than 50 years is 400,000,000. I send letters and postcards to various officials and committees in Washington, D.C. and elsewhere. I do not ask, beg or plead, I *demand* that this government do its upmost about immigration and other difficulties this country is in. If the government and others in power cannot, or won't, do what is necessary to save this country then we are headed for more anarchy than we have now.

LEATRICE B. PHILLIPS
Philadelphia, PA

Editor:

The excellent article by Diana Hull in the Fall 1996 issue of THE SOCIAL CONTRACT, "Ethnonationalism, Aztlan and 'Official Spanish'" was, I am sure, an eye-opener to many readers who had not realized the lengths to which the "Aztlan" activists have already gone both in their rhetoric and their actions to promote a future takeover and separation of the American Southwest. The continuing massive legal and illegal immigration flow across our southern border (and elsewhere) along with the unwillingness of the Federal government to do anything effective to slow it bodes ill for the survival of the United States of America. Two decades ago America celebrated its bicentennial. Will there even be a tricentennial? At the rate things are going, Americans may not have long to wait to find out.

Dr. Hull's article, like others I have seen on this topic, does not mention what "Aztlan" actually means — other than as a rallying cry carrying considerable emotional power for those involved in the movement and those whom they hope to influence; and as the label for a dreamed-of Chicano nation or region, either annexed to Mexico or independent with close ties to Mexico. A little background on the origin of this rather exotic term may be instructive.

Aztlan is the name in the Nahuatl language for the legendary original home of the Aztecs, thought by some historians to have been located in the tropical Pacific coastal marshes of the modern Mexican state of Nayarit (about 22° N. latitude). After a great nomadic migration, they eventually settled in the Valley of Mexico where they were despised as barbarous troublemakers by the peoples around them and forced to settle on an island wasteland no one else wanted in Lake Texcoco. They called themselves "Mexica" — the alternate term "Aztec" derives from Aztlan — and their island, expanded by dredging, became their capital Tenochtitlan (where Mexico City now stands). In a historically short time they became militarily dominant and established a powerful and ruthless empire that in 1521 was brought down by Cortez and his Indian allies (who were chafing under Aztec rule or the threat of it, and no doubt tired of being victims of mass human sacrifices to the Aztec gods). In many ways the rule of the Spanish conquistadores that followed was equally brutal, but that is another story. For a concise and very readable account of pre-Columbian civilizations in this valley by a distinguished Mexican historian, see Ignacio Bernal, *Mexico Before Cortez*.

If the American Southwest from Texas to

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California is not to become a separate nation or Mexican region called Aztlan — a region far larger and very distant from any region ever populated or controlled in history by predecessors or descendants of Aztecs — the present uncontrolled flow of immigrants must be stopped or greatly reduced, and soon. That flow, including others in other parts of the country, has been called a foreign invasion, with some reason, especially as applied to illegals; but even more it is cultural suicide on America's part, as present U.S. immigration law is in effect currently inviting a million people a year — mostly from Third World backgrounds vastly different from any flow seen before 1965. And the illegal influx continues unabated, with few effective measures being implemented to control it. The government refuses to make any substantial changes due to complacency and deluded Establishment notions of political correctness, and, although the general public is becoming more concerned, it has not yet roused itself sufficiently to force real reform on the political scene.

Meanwhile the demographic changes resulting from too much immigration and its consequences, already breathtaking for such a huge country, are becoming embedded. When a certain point is passed such changes tend to become irreversible and pressures build up that result in an explosion. Today's immigration delusionaries give no sign of having any concept of the ugliness and tragedy for all that can result, although we have plenty of current and historic examples from all parts of the world. There is little evidence that the United States is "somehow magically insulated from the lessons of history," in Dr. Hull's words. It is already very late in the game to be waking up; one hopes not too late.

If immigration reform comes too late, or is too little, the "mythical" Aztlan may become stark reality in the not-so-distant future. If the American Southwest, or parts of it, should split off from the United States, it is not unlikely that other parts of the country impacted by heavy immigration and different coalescing groups would also do so along ethnic or cultural fault lines. Or such a breakup might be averted, for a time, only by the imposition of a repressive totalitarian government. Or — there could be full-blown civil war.

LEE G. MADLAND
Bishop, California

Editor:

I was greatly pleased by David Payne's generally favorable review of my book, *The Global Migration Crisis: Challenge to States and Human Rights* in the Spring issue of THE SOCIAL CONTRACT but take objection to his opening line that "this is a book about problems, not solutions" and his conclusion that "not once does he attempt to take a moral stand or support a moral argument on these issues" and that I hide "behind a smoke screen of objectivity."

Chapters 8 and 9 of my book explicitly deal with policy issues, many from a moral perspective. I present the moral case against those who advocate open borders, and argue that no country "is obligated to admit individuals seeking employment, higher income or a better way of life." I then explain why governments (and their citizens) may welcomer immigrants and argue that depending upon their circumstances they can decide whether or not to admit migrants, how many, and with what characteristics. The costs and benefits of migration differ from country to country; what is appropriate for one country may not be appropriate for another.

I further argue that countries must be able to control illegal immigration if they want to have a politically acceptable immigration policy. I describe the different kinds of controls to reduce (though never to eliminate) illegal migrations and why I think it both likely and necessary that governments look for more effective ways to control entry. Finally, I suggest some of the ways in which governments might try to influence conditions in countries that produce large numbers of emigrants and refugees.

As for hiding behind "the smoke screen of objectivity" I view that as more complimentary than perhaps Professor Payne intended.

MYRON WEINER
Moretown, Vermont

David Payne Responds:

Dr. Weiner's response is appreciated. My stated opinion that he is too "objective" is merely a personal yearning for more of his thoughts on the issues and should not be taken as a criticism of an excellent analytic work.

TSC

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Quotes Project Underway

The Social Contract Press solicits additions

by David Payne

The Social Contract Press is preparing to publish a collection of quotations on our topics of population, immigration, language and national unity. It will be patterned after *Barlett's Familiar Quotations* and will, we hope, serve as a resource for journalists, scholars, activists and others in need of a pithy or authoritative comment. If you have some favorite quotes that you would like to see included, please send with *complete citation* to:

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Samples from 'Immigration' Entries

...[immigrants] will bring with them the principles of the governments they leave, or if able to throw them off, it will be in exchange for an unbridled licentiousness, passing, as usual, from one extreme to the other. It would be a miracle were they to stop precisely at the point of temperate liberty.

—THOMAS JEFFERSON
Notes on Virginia (1782)

* * *

Alexander Hamilton cited Jefferson in the following passage:

The safety of a republic depends essentially on the energy of a common national sentiment; on a uniformity of principles and habits; on the exemption of the citizens from foreign bias, and prejudice; and on the love of country which will almost invariably be found to be closely connected with birth, education and family.

The opinion advanced in [Thomas Jefferson's] Notes on Virginia is undoubtedly correct, that foreigners will generally be apt to bring with them attachments to the persons they have left behind; to the country of their nativity, and to its particular customs and manners... The influx of foreigners must, therefore, tend to produce a heterogeneous compound; to change and corrupt the national spirit; to complicate and confound public opinion; to introduce foreign propensities. In the compo-sition of society, the harmony of the ingredients is all important, and whatever tends to a discordant intermixture must have an injurious tendency.

The United States have already felt the evils of incorporating a large number of foreigners into their national mass; by promoting in different classes different predilections in favor of particular foreign nations, and antipathies against others, it has served very much to divide the community and to distract our councils...

—ALEXANDER HAMILTON
January 12, 1802

Quoted in *The Myth of Open Borders: The American Tradition of Immigration Control*, by Wayne Lutton (Monterey, Va.: AICF) 1988, pp. 7-8.

* * *

Immigration: the sincerest form of flattery.

— AUTHOR UNKNOWN

* * *

My dictionary gives the following definition of nativism: "the policy of protecting the interests of native inhabitants against those of immigrants." That, in my view, is precisely what our policies should be doing, and to imply that it is wrong is astonishing!

Could any rational American seriously argue that we should be doing the exact contrary, i.e., protecting the interests of immigrants against those of native Americans? That would be absurd, of course. Yet those who charge others with nativism clearly imply that is what we should be doing.

—DON MANN
from a rough draft for an ad,
"Are You A Population Growthist?" TSC

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Asylum *Ad Absurdum*

Gay, Gender, HIV groups pass through loophole

by James S. Robb

The stated goal of U.S. refugee policy since the Refugee Act of 1980 has been to provide shelter to foreigners fleeing their countries because of discrimination based on their race, religion, nationality, or political views.

Over the years, America has provided a haven to many thousands of people who have had real reason to fear that they would be harmed if forced to return to their country of origin. Perhaps they were human rights activists, or practitioners of a banned religious sect, or a member of a persecuted tribe. Whatever their circumstances, they looked to the U.S. as their last hope. Because we were careful to guard the integrity of the refugee system, Americans generally supported the admitting of refugees.

> Politically correct "cultural asylum" is undermining confidence in America's refugee policies. The key to a solution is action by the U.S. Congress to define more carefully what constitutes cause for granting asylum.

Today, however, the legitimacy of the refugee/asylum concept is being undermined by a legal loophole that the immigration lobby, expansive-minded immigration judges, and the current administration have used to dramatically increase the types of persons granted asylum.

Instead of a being restricted to a few basic categories widely supported by the American public (such as persons fleeing Communist regimes) successful asylum-seekers now include such groups as:

- Homosexuals claiming governmental or societal persecution
- HIV/AIDS sufferers hoping to gain access to American health care
- Feminists or upper-class educated women from male-dominated societies
- Chinese nationals objecting to their government's one-child-family policy
- Practitioners of transcendental meditation.

The Immigration and Nationality Act lists as acceptable grounds for granting refugee status those persons who are fleeing or have fled from their country because of a "well-founded fear of persecution on account of race, religion, nationality, *membership in a particular social group*, or political opinion" (italics added).[1]

This language was adopted in 1980, following precisely the language used in the 1951 Geneva Convention on Refugees. The Geneva Convention language was crafted primarily to resettle the large numbers of refugees created by World War II. The clause about membership in a "particular social group" was a part of the Convention language, but it did not apply to U.S. policy until Congress decided to adopt the international standards in 1980.

While granting asylum on the basis of race, religion, and political views has been common for 50 years, the vague language about "particular social group" has only been exploited more recently. This catch-all has allowed the immigration establishment to bring in numerous new, much less plausible groups during the last decade.

The Stakes

By using the "particular social group" loophole to expand the scope of refugee and asylum practices, the U.S. loses in at least three ways:

1. the number of persons with potentially defensible claims for asylum in the U.S. increases enormously,
2. the burden of proof for individuals desiring asylum to use the "particular social group" language has been lowered, and

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3. groups the American people might not choose to shelter gain access to our shores.

GAY ASYLUM

Until very recently, homosexuals not only failed to qualify as refugees, they were actually banned from immigrating to or even visiting the United States. The Bush administration only dropped that provision in 1991.[2] A further provision banning visits or immigration by persons infected with the HIV virus was only partially waived for last summer's Olympic Games in Atlanta.

Several years earlier, however, a chain of events had begun which would not only eventually make homosexuals eligible for immigration, but also extend them refugee status.

A Cuban Felon Blazes the Trail

In 1985, a Cuban man seeking asylum in the U.S., Fidel Toboso-Alfonso, had his day in court in front of Immigration Judge Robert Brown of Houston. After coming to this country in the massive Mariel Boat Lift of 1980, he was now facing immediate deportation because of felonies he had committed here. In the five years since the Mariel Boat Lift he had already been convicted of burglary and cocaine possession. Like so many other criminal immigrants he only requested asylum when his crimes caught up with him.

His asylum claim was based on this: being a gay man in his native Cuba made him a member of a "particular social group," and the Cuban government had persecuted him because he was a member of that group.

The INS urged the immigration judge to deny the grant of asylum. But the judge listened to Toboso-Alfonso's story of how police regularly brought him in for questioning, and how they posted signs on his door announcing he was a homosexual. Further, the Cuban asserted, the police told him he must leave the country in the Mariel Boat Lift, lest they place him in prison for four years.

Convinced by this sad but entirely uncorroborated story, the judge agreed that Toboso-Alfonso did belong to a "particular social group" — Cuban gays. While declining to formally grant the Cuban asylum, he did set aside the man's deportation order based on his claims of persecution. The felon could remain in the U.S.

The Immigration and Naturalization Service was appalled by this decision and appealed to the Board of Immigration Appeals (BIA). The INS insisted that "socially deviated behavior, i.e. homosexual activity is not a basis for finding a social group within the contemplation of the [refugee] act."

Yet five years later, when the BIA finally issued its opinion, a 3-2 majority agreed that Judge Brown was right in blocking the deportation. The board did not certify the case as a precedent; that is, the Toboso-Alfonso case did not have to be seen as a precedent by immigration judges looking at similar situations.

Theoretically, the Marielito was just a lucky individual profiting from an anomalous ruling. But the sequence of events soon disproved that idea.

"In 1993, the Lesbian and Gay Immigration and Asylum Rights Task Force was organized ... lobbying for a formalized acceptance of the gay asylum concept."

In 1992, Bill Clinton was elected president, and the gay-rights lobby revved up into overdrive, believing they could now press claims for equity in various fields, including asylum. In 1993, for example, the Lesbian and Gay Immigration and Asylum Rights Task Force was organized.[3] It immediately began lobbying for a formalized acceptance of the gay asylum concept. Its other primary agenda was to get the government to grant gay persons the right to bring in their partners from outside the U.S. in the same way that husbands and wives are now.[4]

A Homosexual Flees — From What?

Then in July 1993, Immigration Judge Philip Leadbetter granted asylum to a Brazilian, Marcelo Tenório, a 30 year-old house painter. Tenório, an open homosexual, claimed he had been stabbed and beaten up outside a gay bar in Rio De Janeiro in 1989. He had to flee for his life, he claimed, since homosexuals were often murdered by individuals in that *macho* culture. A gay rights activist backed up Tenório's testimony stating that 1,200 gays had been slain in Brazil since 1980.

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No one even claimed that the Brazilian *government* had any role in persecuting gay men there. There are no laws against homosexual activity. Quite the contrary — the Brazilian homosexual sub-culture is known throughout the world for the flaunting of its sexuality. Transvestites are an accepted, indeed popular, part of the annual Carnival.

Furthermore, of the 38 recorded murders of homosexuals in Rio during the first half of 1993, reported a prominent gay rights group, most of the killers turned out to be homosexual prostitutes who murdered their male clients in order to rob them. Brazilian officials and journalists also disputed the legitimacy of the case.

"There is no conspiracy or evidence that could indicate an organized practice," stated an article in the Brazilian newsweekly *Veja*. "In the hands of the noisy American pink lobby, Tenório's cause became a festival of demagoguery — and of Brazil-bashing."[5]

The gay asylum cause continued to grow after Tenório won his asylum case. Clinton had promised to work for gay rights in his 1992 presidential campaign, and the changes he brought eventually worked their way down to the Immigration and Naturalization Service.

Sheltering an AIDS Activist

In March, 1994, the INS for the first time granted asylum to an alien based on claims of persecution of homosexuals. This was a landmark decision since the previous grants were made by immigration judges rather than the INS itself.

The case revolved around Jose Garcia, a Mexican national living in the U.S. for 12 years, who told the INS he could not return to his homeland for fear of ill-treatment. His uncorroborated story spoke of being taunted by fellow Mexicans, falsely arrested and sometimes raped by police.

Garcia said he feared retaliation if sent home, because he had been an outspoken AIDS activist in San Francisco. A spokeswoman for the Mexican Consul General's office in San Francisco disputed Garcia's claim. "We respect the rights of anyone without consideration of sexual orientation," said Daphne Roemer. She asked why Garcia had not approached her office with his concerns.[6]

The gay rights lobby pressed their advantage with the administration. So far, none of the gay asylum cases had been declared "precedent" for future cases. Theoretically, gay asylum was not yet official policy, though it was edging closer and closer.

A prominent gay magazine, *Out*, reported in May, 1994, that the INS's Resource Information Center, which monitors human rights in other countries, was chiefly relying on the International Gay and Lesbian Human Rights Commission for its information on how homosexuals were treated in other societies. *Out* also claimed that hundreds of homosexuals were pressing their requests for gay asylum in the immigration courts.[7]

In the meantime, Rep. Barney Frank, the openly gay congressman from Massachusetts, had written Attorney General Janet Reno in 1993, urging her to use her discretionary authority to declare the long-closed Toboso case precedent for all future cases involving claims of persecution of homosexuals. Frank said he was acting on a request by the International Gay and Lesbian Human Rights Commission.[8]

The Attorney General Declares...

On June 16, 1994, Reno complied, stating in the memo attached to her Attorney General's order, "The [Toboso] case holds that an individual who has been identified as homosexual and persecuted by his or her government for that reason alone may be eligible for relief under the refugee laws...."[9]

Toboso might have been able to meet that test, but what of Garcia, to whom the INS had already granted asylum? He claimed he was badly treated by police in a single city. Does that constitute the kind of systematic, country-wide repression needed to meet the standard of government persecution?

Troubling Questions Raised

There are several troubling aspects to the Gay Asylum issue:

- How far will the concept of "government persecution" be taken? Although it is true that some governments do not obey their own laws, very, very few countries in the world outlaw homosexuality. Certainly Mexico does not.
- Who is to say who is a homosexual? There are no tests, no exams that prove sexual orientation or practice. Virtually anyone can make the claim, and who can prove otherwise?
- How low will we take the burden of proof? Now we have a protected class of persons, homosexuals, who do not have to prove their homosexuality, and who can make claims of

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governmental persecution even while the nation does not outlaw homosexuality.

- If we cannot really know with certainty which asylum-seekers are truly homosexuals, presumably neither can people in the home countries. Why could the alien not return and blend in?
- The numbers involved are staggering. Homosexual advocacy groups regularly claim that 10 percent of the world's population is gay — 600 million people! Even accepting much lower (and more believable) numbers, couldn't America soon be deluged with persons demanding Gay Asylum? While the number of applicants for asylum that can be finally approved in any one year is limited to 10,000, the number that can be paroled into the country for an indefinite stay is not.
- Finally, who asked Americans whether they wanted to offer permanent shelter to this group of individuals? After all, homosexuality is far from universally accepted in the U.S. Could turning the asylum program into an avenue for gay immigration heighten social tensions here?

"...Is it possible that the immigration apparatus is granting amnesty to persons specifically barred from the U.S. by the Congress?"

AIDS Asylum

Under U.S. law, HIV carriers and, by extension, AIDS sufferers, are barred from entering the country. This provision was passed in 1993 after President Clinton made his ill-fated attempt to open the U.S. military to practicing homosexuals.

Section 212(a) of the Immigration and Nationality Act states that one category of "excludable aliens who are ineligible to receive visas and who shall be excluded from admission to the United States" are persons who have been determined to have "a communicable disease of public health significance, which shall include infection with the etiologic agent for acquired immune deficiency syndrome...."[10]

This seems clear enough. So how is it that immigration judges have begun not only to let HIV/AIDS carriers in, but to actually grant them asylum based on having HIV? And has the INS given its tacit approval to the practice?

In other words, is it possible that the immigration apparatus is granting amnesty to persons *specifically barred from the U.S. by Congress?* Not only that — is it possible the INS is sheltering these persons for the very reason Congress decided to exclude them? This hardly sounds legal, but until exposed in *The Washington Times* last fall, it was happening.

The matter became prominent in late 1995 when the Presidential Advisory Council on HIV/AIDS, a White House political creation, asked the administration to declare HIV-positive individuals a "particular social group" for purposes of immigration. Buttressed with the proposed new social group classification, the council indicated that the INS should then issue depor-tation waivers for HIV/AIDS individuals.

Thus, if AIDS sufferers could be reclassified as refugees, asylum law would overrule the anti-contagious disease language. In other words, asylum trumps public health, and the will of Congress is ignored.

The administration's initial response to the task force's request was mostly positive. While stating that it was the INS's job to judge the cases of HIV carriers, like all others, on their individual merit, the White House did accept the particular social group argument in principle. Further, the administration noted, "humanitarian factors, such as an applicant's affliction with a serious medical condition, would generally weigh in the applicant's favor."[11]

Then, in October, 1995, an immigration judge in New York granted asylum to a man from Togo, West Africa, who carried HIV. The 30 year-old computer engineer entered the U.S. in April, 1991, learning two years later he had AIDS. The INS moved to deport him but he claimed his medical status made asylum necessary. There was insufficient medicine in Togo to treat him, he said. Moreover, he and his family would be made to feel ashamed if his community learned the truth. The judge accepted this reasoning. In what appears to be a politically motivated move, the INS decided not to appeal the ruling. In essence, the precedent was set.[12]

Congressman Lamar Smith, the Texas Congressman who chairs the House Judiciary subcommittee on immigration, was outraged by the

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turn of events. "Congress never intended to allow admission of individuals simply because they have HIV," he told *The Washington Times.*

"This is a dangerous precedent that could make the United States the destination of choice for thousands of individuals from around the world with AIDS," he stated.[13]

"Once a group is recognized, an applicant for asylum must prove that she has been 'grievously harmed' personally because of her group affiliation..."

Scarier still, the government is now not only allowing in HIV carriers, it has decided to pay for all their medical bills. The immigration bill recently signed into law originally banned the government from paying the medical bills of immigrants with AIDS. But the White House threatened to veto the entire bill unless that provision was removed, so congressional leaders relented.

It is presently the administration's policy to pay for immigrants' AIDS medical bills. Senator Alan Simpson said on the Senate floor that it costs the taxpayer $119,000 each year to treat just one AIDS patient. A final twist: under the Americans with Disabilities Act, having AIDS potentially qualifies a person as "disabled." This, in turn, means one can get disability payments and health coverage from Social Security.

However, after the national press picked up this story from *The Washington Times,* the White House swiftly began back-pedaling. With the president's re-election bid just around the corner, a White House official stated, "We're not changing policy at all.... We have a strict policy that's been enforced since 1993 that does not allow anyone with HIV to enter the country."[14]

Yet INS spokesman Brian Jordan insisted in October that the White House had instructed his agency to add HIV to its list of possible reasons to grant asylum status. "The White House has the last say," said Jordan. The anonymous White House official who spoke to *The Washington Times* insisted, however, that HIV carriers could only be issued a *waiver* rather than being granted actual asylum. The difference is significant, since holders of waivers cannot gain permanent residency.

In any case, Rep. Smith noted that the INS has not appealed the case of the AIDS patient granted asylum by the New York judge. He suspects the White House may have pressured the agency to let the precedent stand.[15]

GENDER ASYLUM

Less well-documented, but possibly with even greater impact upon U.S. asylum procedures, is the new frontier of Gender Asylum. This landscape — like all frontiers — is confusing and often contradictory.

The thinking behind Gender Asylum is that certain groups of women in some nations are so uniformly repressed that they actually constitute a "particular social group." Being declared a member of a "particular social group" satisfies one essential condition for asylum. The other is demonstration that the asylum-seeker is persecuted *because of membership in the group.*

As stated by the Board of Immigration Appeals:

> *'Persecution on account of membership in a particular social group" encompasses persecution that is directed toward an individual who is a member of a group of persons all of whom share a common, immutable characteristic. The shared characteristic might be an innate one such as sex, color, or kinship ties... (emphasis added).*[16]

Determining which group of individuals make up a "particular social group" is tough enough, as will be demonstrated. But once a group is recognized, an applicant for asylum must prove that she has been "grievously harmed" personally because of her group affiliation through sexual abuse, beatings, jail time, etc.

Which Women Should Be Protected?

Probably the first decision involving Gender Asylum was handed down in 1985 by Judge Steven Breyer, now a Supreme Court justice. Judge Breyer accepted the arguments of a Ghanaian woman that she was a member of three particular social groups: *educated and professional women,* family with ties to a deposed regime, and other political ties of her own.

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Ms. Ananeh-Firempong claimed she might well face death if returned to Ghana, and Breyer agreed.[17]

As cases of women requesting asylum based on gender considerations mounted during the 1980s and 1990s, the INS felt it must respond with more complete guidelines. So on March 26, 1995, the agency's Office of International Affairs issued a long and complex set of guidelines for asylum officers to use in interviews with aliens seeking asylum. The sorts of abuse that the guidelines discuss as *possible* forms of persecution are: "sexual abuse, rape, infanticide, genital mutilation, forced marriage, slavery, domestic violence, and forced abortion."[18]

This admittedly shocking list of examples includes three distinct kinds of repressions. First, actions which involve at least some governmental coercion and/or gross negligence (slavery, forced abortion). Second, actions which are administered by ethnic or tribal groups (genital mutilation). Third, misdeeds which are highly subjective and are mostly family disagreements (forced marriage, domestic violence).

All told, hundreds of millions — perhaps billions — of people fall into these categories. Freedom House reports that about three-quarters of the world population lives under conditions that are "not free" or "partially free."

In the Gray Areas

The INS guidelines are clear that sexual violence and other of the acts described above do not necessarily constitute "persecution." For example, if a woman was gang-raped by government soldiers, as happened in the case of a Haitian asylum-seeker, the act would not be considered persecution if it were carried out at random. That is, any women might have gotten the same treatment.

But in this particular case, the soldiers made it clear that they were raping her as punishment for her political views. Thus, the woman was recognized as a member of a particular social group (Haitian women with outspoken criticisms of the Haitian government), and as someone who had suffered "grievous harm" as a result. This case was declared a "precedent" by the BIA in 1993.[19]

Not only are some of the punishments meted out to women peculiar to them, the *causes* given for that persecution may be gender-related. The INS guidelines mention "marrying outside of an arranged marriage, wearing lipstick or failing to comply with other cultural or religious norms" as possible triggers for persecution.[20]

Gender Asylum is so vague a concept that it is not surprising that some of the resulting decisions seem contradictory. Some practices, like alleged forced sterilizations in China, are not considered persecutory by INS because they involve governmental policies applied to an entire population.

"Gender asylum is so vague a concept that it is not surprising that some of the resulting decisions seem contradictory."

This policy has been decried as hypocritical and wrong-headed by the pro-life community. If wearing lipstick can be considered a protected right, why not a women's fertility? The Clinton administration has responded to the criticism by refusing asylum but granting a number of Chinese women "parole," a kind of suspended animation in the system where the applicant may remain in the U.S., usually indefinitely.

Opposing Social Custom

On the other hand, in the case of *Fatin v. INS*, the Third Circuit Court of Appeals considered whether Iranian women forced to wear the veil and live by other fundamentalist Moslem rules were being persecuted. Ms. Fatin told the court that her failure to comply with these rules could, under Iranian law, result in "74 lashes, a year's imprisonment and, in many cases, brutal rapes and death."[21]

The court ruled that such treatment did indeed constitute persecution *if* two conditions were met: (1) the woman involved was so opposed to the veil, etc., that she could not comply without compromising her "deepest beliefs," and (2) she was willing to take the consequences of disobeying the Iranian law. The applicant, however, failed to convince the court she would indeed reject Islamic law at all costs, and was not granted asylum.

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Although the widening of Gender Asylum protections leaves the *potential* for a major expansion in the number of asylees, the INS says this has not happened — yet. When it issued guidelines on how to handle Gender Asylum in May, 1995, the INS Office of International Affairs instructed staff to report all Gender-related and Gender-based asylum cases for tabulation.

As of September 27, 1996, only 75 gender cases had been reported[22] — a tiny number next to the 197,729 applying for asylum in 1995 alone.[23]

A POSSIBLE SOLUTION

The "immigration judges" aren't part of the judicial arm of government — they work for the executive branch. Presumably, they follow laws passed by the Congress. It is not for them to sew new law out of whole cloth in the manner of the federal bench.

So while it is true that the immigration judges, the Board of Immigration Appeals, and the INS itself seem set on inflating the categories of groups who qualify as legitimate refugees, Congress can stop this trend cold. Only Congress can declare who is to be admitted to the United States. If it has delegated that power to the president or the INS, it can always be taken back. In order to restore the integrity of our asylum policy, Congress must undertake the task.

Here's one way:

The basic problem is that the term "particular social group" has been applied much too cavalierly by the immigration apparatus. Congress should wipe out all present categories of "particular social group" accepted as refugees. Instead, hearings should be held for Congress to decide which groups ought to be covered. Perhaps once a year, the immigration sub-committees should review the list and add to and subtract from it.

I suggest amending Section 101(a)(42) of the Immigration and Nationality Act[24] by striking every instance where the phrase "particular social group" occurs, and substitute "particular social group as defined by Congress." Persons granted asylum — or even "parole" — should be charged against an overall immigration ceiling.

If Americans want to become a haven for AIDS patients the world over, fine. But let the people's representatives decide — not some unelected bureaucracy. TSC

NOTES

[1] This language is found in section 101(a) (42) of the Immigration and Nationality Act.

[2] Masha Gessen, *OUT*, May 1994, p.76.

[3] The task force operates under the auspices of Lambda Legal Defense and Education Fund and the Center for International Lesbian and Gay Associations. For an overview of their agenda in their own words, see the World Wide Web site located at <http://www.verstek.com/stonewall/handouts/LGIART.html>

[4] It seems doubtful the Clinton administration will back this measure, since the president signed the law outlawing homosexual marriages.

[5] James Brooke, "In Live-And-Let-Live-Land, Gay People Are Slain," *The New York Times*, August 12, 1993.

[6] Jennifer Warren, "Asylum OKd on Basis of Homosexuality Immigration," *Los Angeles Times*, March 25, 1994.

[7] *OUT*, ibid.

[8] Bob Hohler, "US Says Those Persecuted As Gays Can Get Asylum,"*Boston Globe*, June 18, 1994, National/Foreign section, p.3.

[9] Janet Reno, Memorandum for Mary Maguire, Acting Chair, Board of Immigration Appeals, June 16, 1994.

[10] Added to INA by §2007(a) of the National Institutes of Health Revitalization Act of 1993.

[11] Presidential Advisory Council on HIV/AIDS, *Progress Report*, July 8, 1996, p.35.

[12] 73 *Interpreter Releases*, 901, July 8, 1996.

[13] Ruth Larson, *Washington Times*, October 3, 1996, A1.

[14] Ruth Larson, "White House Waffles on HIV Asylum Policy," *The Washington Times*, October 22, 1996.

[15] Ibid.

[16] Phyllis Coven, Memorandum: "Considerations For Asylum Officers Adjudicating Asylum Claims From Women," Office of International Affairs, INS, May 26, 1995.

[17] *Ananeh-Firempong v. INS*, 766 F.2d 621 (1st Cir. 1985).

[18] Ibid, p.9.

[19] *Matter of Krome*, BIA, May 25, 1993.

[20] Phyllis Coven, INS guidelines, p.4.

[21] *Fatin v. INS*, 12 F.3d 1233 (3rd Cir. 1993).

[22] Statement of the Office of International Affairs, INS, September 27, 1996.

[23] Center for Immigration Studies.

[24] 8 USC 1101(a)(42).

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Fleeing Their Culture

Extending asylum to women

by Wayne Lutton

The United States has, from time to time and in select cases, provided a safe haven for individuals genuinely subject to persecution by the government of their homeland. But not all fleeing oppression in foreign lands have been made welcome. Refugee admissions did not really become a public policy concern until the World War II era and the subsequent onset of the Cold War. Such refugees and Displaced Persons who were admitted arrived under special legislation aimed at addressing special circumstances. There was no intention of permitting any and all who might wish to come to the United States to do so.[1]

A popular misperception is that the U.S. has a long "tradition" of admitting endless streams of refugees. In fact, it was not until 1980 that Congress enacted a specific Refugee Act. This law accepted the United Nations Organization definition of a refugee, namely: a person living outside of their homeland who is unable or unwilling to return to that country because of a well-grounded fear of government-sponsored persecution due to the individual's race, religion, nationality, membership in a particular social group, or political opinions.

For the sake of law, definitions are important. Refugees are persons living outside of the U.S. who have a "well-founded fear of persecution" and who apply for refugee status. Asylees are persons already in the U.S., or who have just arrived at a port of entry, who claim that they will be subjected to persecution and oppression should they be forced to return home. They apply for asylum.

The drafters of the 1980 Refugee Act asserted that the intake of refugees and asylum seekers who be less than 5,000 per year. But the Refugee Act failed to include a cap or ceiling on annual admissions. In practice, the number of refugees and asylees admitted every year since the 1980 Act took effect has never been under 50,000. Since 1989, yearly admissions have averaged nearly 120,000.

This still understates the number of people admitted under our asylum laws. For FY 1995, for example, refugee admissions were set at 112,000. However, there is currently no limit on the number of people who may apply for asylum in any given year. In FY 1995, 149, 566 foreigners filed asylum applications. During the first six months of FY 1996, there were an additional 90,700 applications for asylum.

Most asylum applications are rejected — the approval rate averaged 10 percent before 1993 and has risen to 20 percent under the Clinton Administration. Nonetheless, the INS estimates that roughly 80 percent of asylum applicants will remain in the U.S. permanently. No matter how a particular individual's case is resolved, it is the rare person who is forced to leave.

With the end of the Cold War, many expected that the number of people applying for refuge in the U.S. would steadily decline. However, special interests have managed to manipulate refugee policy to favor particular ethnic and social groups. Few of the persons now admitted as refugees meet the UN standard.

Political asylum has recently been extended to include people claiming to be opposed to the community standards and traditions of their native lands. In part, this expansion of "refugee" status mirrors domestic American politics and reflects a desire by Congress and the Executive Branch to curry favor with particular constituents. The original intent of the refugee legislation to offer temporary protection to people who are being persecuted as individuals by their home government has been largely overlooked.

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Violence Against Women

Feminists and other pro-immigration activists have succeeded in expanding the limits of asylum to include suffering from domestic abuse, publicly advocating feminism, or disagreeing with traditions and customs not favored in Western countries. In 1995, Attorney General Janet Reno issued new asylum guidelines that were drafted by the Women Refugee Project at Harvard University.

The guidelines outline examples of social customs and traditions that harm women, such as arranged marriage, slavery, and circumcision, now often referred to as female genital mutilation (FGM). Even expressing opposition to wearing a veil can now be grounds for asylum. Michele Beasley, a member of the Women's Commission for Refugee Women and Children, which advised the Justice Department on this issue, pointed out, "This is a major shift in both the commitment of the agency and in its understanding of the way that the asylum claims of refugee women differ from those of men."[2]

In March 1996, the Justice Department issued further guidelines, extending asylum and naturalization opportunities to battered women and children. The so-called "battered spouse waiver" was included in the Violence Against Women Act, a little-noticed provision of the 1994 Crime Bill.[3] The new guidelines amplify how this is to be implemented. According to the new standards, mental as well as physical abuse can be accepted as grounds for asylum in the U.S.

To allay public concerns, INS press releases predicted that only a limited number of "battered spouse" asylum claims were likely to be filed. However, Leslye Orloff, founder of the domestic violence program at Ayuda, a Washington, D.C.-based Hispanic advocacy group, told the *Washington Post* that there might be an initial surge of thousands of such cases nationwide. Alakananda Paul, head of the Asian Women's Self Help Association, went on to note that "physical and mental abuse is common" among the women she works with from such South Asian countries as India, Pakistan, Bangladesh, and Sri Lanka.[4]

A World Bank Study released in June 1997 reported widespread violence against women in the Caribbean and throughout Latin America. Between 25 percent and 50 percent of women south of the border told development agencies they have been abused by male partners. In Mexico, some type of abuse had been committed against women in 70 percent of the homes surveyed.[5] The number of potential asylum applicants from this region alone is in the *tens of millions*!

The FGM Cases

Many natives of the Third World honor cultural rites that Westerners find revolting. One of these is female circumcision, a custom begun in the 5th century B.C. that is observed by Muslims, Christians, Animists, and adherents of other primitive cults and mystery religions in over 26 countries in Africa, the Middle East, and Asia.

Female genital mutilation take three forms, ranging from a minor ritual cutting or removal of the foreskin of the clitoris, called *Sunna;* excision of the entire clitoris and (usually) the labia minor; to its most extreme form, infibulation (pharaonic circumcision), involving the removal of the clitoris and the labia minora and labia majora, and the joining of the vulva with stitching, leaving only a small opening for urine and menstrual flow. The opening is widened on marriage and for childbirth, but is often resutured after the mother gives birth. There are no sound medical reasons to support any of these procedures.[6]

"However disgusting people in the West find FGM, it must be underscored that no government anywhere forces women to undergo the operation. Nor do any governments punish females who refuse to comply with this tribal rite."

However disgusting people in the West find FGM, it must be underscored that *no government anywhere forces women to undergo the operation.* Nor do any governments punish females who refuse to comply with this tribal rite. Expressed opposition to female circumcision thus does not meet internationally recognized grounds for seeking asylum in the U.S.

This has not discouraged the Clinton

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Administration and the Board of Immigration Appeals (BIA) from declaring opposition to FGM good cause for extension of asylum. Two cases have dealt with this topic.

In the first, an illegal alien from Nigeria, Lydia Oluloro, had deportation action halted and was finally granted asylum after she claimed that her two daughters would probably be subjected to the Yoruba tribal custom were they all returned home to Nigeria. Ms. Oluloro admitted that her own relatives, not the Nigerian government, would be the ones pressing her daughters to undergo the operation.

"Aided by what USA Today described as an 'army of human-rights lawyers', Kasinga and her supporters aimed to establish 'a broad policy that any woman or girl who has undergone mutilation in the past or fears it in the future could get asylum.'"

During the course of her March 1994 immigration review in Seattle, Washington before Judge Kendall Warren the Nigerian Embassy testified that while FGM has been a traditional practice in some parts of Africa, including Nigeria, it has not been forcibly applied on unwilling parties. Where done, it is with the consent of the parents and the girl. Furthermore, H. Elabor, Minister at the Embassy in Washington, D.C., confirmed that today, female circumcision is no longer widely performed in Nigeria and that Oluloro's two daughters were not in danger of being kidnaped and forcibly circumcised.

Oluloro admitted that she arrived in the U.S. on a tourist visa with the intent of remaining in this country; that she falsely swore to being a U.S. citizen born in Chicago when she took jobs here; and that she made a false claim of American citizenship in order to obtain a Social Security card. The immigration hearing also brought to light the fact that she managed to secure welfare benefits, including food stamps, and was living in taxpayers-subsidized (HUD Section 8) housing, and that she was required to present her falsely-acquired Social Security card in order to qualify for Section 8 housing.

In his concluding remarks, Judge Warren stated, "With regard to the practice of FGM, the court does not find that there is any government-sponsored program of FGM. The court therefore is inclined to accept the position of the Nigerian government in this regard, that it does not promote the practice."

In this case, Oluloro made no claim that her daughters might be subject to government coercion. Yet, the court granted her application for suspension of deportation. She was allowed to stay in the U.S.[7]

In the second case, decided June 13, 1996, the Board of Immigration Appeals ruled that the practice of female circumcision is a form of "persecution" within the meaning of asylum law. All of the immigration judges who hear asylum cases around the country are currently bound by the BIA's decision.[8]

In this instance, Fauziya Kasinga, a 19-year-old citizen of Togo, applied for asylum after being arrested trying to illegally enter the U.S. with a forged British passport. She asserted that her relatives had arranged a marriage for her with a man in his 40s and that her tribe, the Tchamba-Kunsuntus, practice female circumcision. By her own admission, when she was 17 years of age, Ms. Kasinga left Togo for Ghana, where she failed to file an asylum claim. From Ghana she went on to Germany, where she worked for a while. Once again, she did not appeal for asylum. Instead, she finally made contact with a ring of international alien smugglers, purchased one of their fraudulent British passports, and then attempted to gain entry through Newark International Airport.[9]

An immigration judge in Baltimore rejected her asylum claim, concluding that her account was "not credible." She appealed. Aided by what *USA Today* described as an "army of human-rights lawyers," Kasinga and her supporters aimed to establish "a broad policy that any woman or girl who has undergone mutilation in the past or fears it in the future could get asylum."[10]

James H. Walsh, Associate General Counsel of the INS, told the *Washington Post* that the decision to let her stay "is contrary to asylum law." Ms. Kasinga was not subject to persecution by the Togo government.

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Instead, said Mr. Walsh,

> *her travel route is the standard one for economic migrants entering the United States illegally by any means available, who claim asylum only on apprehension... Although female circumcision may well be a centuries-old expression of male domination, it is not a form of government-sponsored persecution required for asylum. In fact, if the young woman from Togo had claimed that her government was denying her the rite, she would have had a stronger asylum case.*[11]

In the United States, Britain, France, Germany, Italy, the Netherlands, and other Western countries, Third World immigrants are practicing FGM.[12] The states of Minnesota, North Dakota, and California, outlawed FGM, before the U.S. Congress acted in 1996 to impose fines and up to five years imprisonment for individuals found guilty of performing the procedure on girls under the age of 18. Congress also ordered the Department of Health and Human Services to "identify communities in the United States that practice female genital mutilation, and design and carry out outreach activities to educate individuals in the communities on the physical and psychological health effects of such practice."[13]

Further, Congress instructed the Secretary of the Treasury to oppose any loan or other utilization of funds of international financial institutions, other than for basic human needs, for the government of any country which practices FGM and has no educational program in place to prevent its practice.[14] As previously noted, no government in the world currently sponsors FGM. Thus, Public Law 104-208 is another instance of empty political posturing by the U.S. Congress. The action does nothing substantially to reduce the incidence of FGM in the Third World. It is a prime example of what Jeffrey Rosen labels the "age when the president and Congress have marginalized themselves by embracing the politics of symbolic legislation."[15]

Despite protests from the U.S. Congress, the American Medical Association, the World Health Organization, and a host of international human rights and feminist organizations, Third World nationals are insisting on their right to continue the practice. It is considered "insensitive," "Eurocentric," and "racist" to suggest that such barbaric customs be banned.[16]

Female circumcision has been performed on anywhere from 85 to 114 million women, according to the World Health Organization. Each year, an additional two million girls undergo this primitive rite.[17] And efforts are being made to maintain the practice. In Egypt, which is second only to Israel on the list of U.S. Foreign Aid recipients, a high court recently repealed the Health Ministry's ban on FGM. Sheik Youssef el-Badri, who took Health Minister Ibrahim Sallam to court in 1996, beamed after the verdict:"I will prostrate myself before Allah, thanking him for inspiring the court to take this decision. This is a return to Islam."[18]

"Ultimately, the U.S. must reaffirm that it is a Western country and take appropriate measures to secure the best interests of the American majority."

Clearly, international human rights organizations face a daunting task in trying to overcome centuries-old customs and belief systems. Perhaps the U.S. and other Western governments could take more active steps to discourage this practice, such as imposing economic sanctions and trade boycotts on countries where FGM continues. No one is yet suggesting that the Third World again come under outside political administration, even though this is likely the only way to outlaw practices Westerners find offensive

In the wake of the Kasinga decision, immigration lawyers are receiving asylum applications from men, claiming that their wives, daughters, fiances, and nieces may be subject to female circumcision and that they should thus be allowed to come to the U.S. with them.[19] To how many of these people will we grant asylum?

Conclusion

The recent expansion of "asylum" to include "culture refugees" qualifies just about everyone living outside the Western World for admission to the U.S. Consequently, current refugee policy opens a door reserved, almost exclusively, for immigrants from the Third World. This corruption of asylum policy must be ended. The distinction between "refugee" and

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"asylee" is being deliberately blurred. As the noted professor of human ecology, Garrett Hardin, has observed, "the asserted need of people bred in another culture does not confer on them the right to be supported in ours."

Ultimately, the U.S. must reaffirm that it is a Western country and take appropriate measures to secure the best interests of the American majority. Non- and anti-Western people — and the cultures they bring with them — should not be permitted to settle in the United States.

Paradoxically, those who seek refuge elsewhere are most often the very people who best understand the politics, economics, and culture of their homelands and are among the best qualified to help solve problems. They ought to be encouraged to work in their own homelands for desired change.

In the future, admission of any person as a refugee should be done so on an individual basis only after careful screening and on a strictly temporary basis. And refugees should be counted against an overall annual immigration ceiling. TSC

NOTES

[1] Cf. Robert A. Divine, *American Immigration Policy, 1924-1952* (New Haven: Yale University Press, 1957).

[2] Ashley Dunn, "U.S. to Accept Asylum Pleas for Sex Abuse," *New York Times*, May 27, 1995, p.A-1.

[3] U.S. Department of Justice, INS Fact Sheet, March 26, 1996.

[4] Lena Sun, "Battered Immigrants Gain Ally Against Abusers," *Washington Post*, March 27, 1996, p.A-3.

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A Funny Thing Happened on the Way to the U.S.

Fraudulent claims make a sham of immigration law

by James Walsh

The following vignettes, which attest to the magnitude and diversity of immigration fraud, draw on my personal conversations and on court testimony. Each is an actual account of immigration fraud; each contains a moral for the nation to ponder.

The Latin Letter

A veteran INS attorney detailed to the New York City office to assist with a heavy deportation caseload got his comeuppance by means of a fraudulent letter handwritten in Latin. The case involved a 30-year-old illegal alien from the Peoples Republic of China (PRC), arrested during a narcotics raid on a noodle factory and held by the INS because he had no immigration papers and spoke no English.

> The INS is an agency that is overwhelmed with backlogs, political pressures and confused, overlapping legislation.

He knew enough English, though, to immediately cry, "Asylum, asylum!" Through an interpreter, he asserted in his native Fujian dialect, fear of persecution in his homeland for being a Roman Catholic opposed to the PRC mandatory family-planning program. Once his claim was filed, the INS released him with a work permit until the government could schedule his day in immigration court. It took four years to get a hearing date, and then the INS had to detail in lawyers to handle it. He was just one of 400,000 aliens nationwide awaiting adjudication of asylum claims.

Shortly before the hearing began, the alien's attorney, from Catholic Charities, approached the INS attorney and complemented him on his reputation as a tough opponent. Amenities were exchanged. Having thus broken the ice, the alien's attorney handed the INS attorney a copy of a letter that he planned to introduce in evidence. It was an English translation of a letter originally handwritten in Latin and signed by a Roman Catholic bishop in China.

The INS attorney asked to see the original, stating that he would do his own translation — qualified for the task as he was by eight years of high school and college Latin. The letter, composed in perfectly grammatical Latin and signed with the proper inscription of a Roman Catholic bishop, stated that the presenter was a devout Roman Catholic active against the PRC family-planning program.

After the young Chinese man testified, his attorney offered the letter in evidence. The INS attorney, for the record, stated that he had translated the letter himself, declared it genuine. Even the Bishop's seal was authentic. He agreed to the asylum claim, but not on the family planning claim, as that was not a legitimate claim. Rather, he agreed to asylum on the religious persecution claim, Communism against Catholicism. Thus, the United States received another political asylee.

Later, as the INS attorney was leaving with several of his New York colleagues, he described the day's events, and, with some self-satisfaction, mentioned translating the two page Latin letter. The New York attorneys glanced at each other and then began to laugh, explaining that the letter, once genuine, was now used routinely by immigration lawyers representing Chinese asylum applicants. It only worked on out-of-town INS attorneys, of course, and then only on certain egotistical ones who could read Latin; and so the legacy of the Latin letter lives on.

MORAL: The 33 largely autonomous INS districts in the United States and the 3 INS overseas directors need to develop better communication regarding fraudulent documents; intelligence-sharing should be immediate and agency-wide.

James Walsh, *a former associate general counsel with the Immigration and Naturalization Service (INS) is a consultant on immigration policy. He is a frequent contributor to* THE SOCIAL CONTRACT.

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Guardian Angels

In 1991, the 22-year-old daughter of a wealthy Muslim import-export family, prepared to leave her parents' home in Kabul. The Afghan muhajidin had driven the Russians out, but fighting had broken out anew among the various ethnic groups and Muslim factions. Kabul, with its four ethnic quarters, was the scene of fierce and indiscriminate fighting; the government was unstable; and it was neither a safe place for a young woman nor for her wealthy family.

Later at her asylum hearing in the United States, the young woman described, through an INS interpreter, how one night her parents told her to pack a small suitcase and go with an armed driver to Pakistan. The dirt roads were jammed with Afghans fleeing the fighting, and the drive was long and dangerous. Once in Pakistan, the driver dropped her off at an airport. Since she spoke only Pashto and Dari (Afghan Persian), she was unable to purchase a ticket; but a man appeared who gave her a ticket to New Delhi, India. There, another man met her and took her to a house where the people spoke a language she did not understand, but they assured her they were Muslims.

She stayed with this family for several weeks, until one day a Pashto-speaking man arrived and took her to the airport and boarded a plane with her. After one short stop, they arrived at London's Heathrow airport, where they waited until the man took her to another plane bound for New York. As they boarded the plane, the man held all their travel papers and tickets, and then just before take-off he left the plane. Thus she arrived at New York's JFK airport with no ticket, no travel documents, no visa, or no passport.

The young woman continued her testimony. She was taken into INS custody but could not be interviewed because the agency had no Dari translators onsite. Suddenly a man appeared who spoke Dari. He told the INS that the young woman wished to claim asylum based on her fear of persecution in her homeland because she was a Pathan, Afghanistan's largest ethnic bloc. With her claim filed, she was handed an OSC (Order to Show Cause why she should not be deported). As the Dari-speaking man requested, her OSC hearing was set for two months later in the INS Washington, D.C., District; then he left.

She continued to relate how, walking through the airport, she noticed a man holding up a sign written in Dari telling her to come with him. He took her to his home in Arlington, Virginia. At her OSC hearing, through her attorney, she renewed her asylum claim and was released until an asylum hearing could be scheduled. She also received a green card and, during this interval, began work at a restaurant as a cashier. Three years later, at her asylum hearing, an INS lawyer questioned her claim, stating that no religious persecution was shown, since all sides to the fighting were Afghan Muslims. She was a Pathan, but the U.S. State Department reported no government persecution of Pathans. The INS attorney argued that her journey followed the route frequented by Afghan drug smugglers, and that her journey without documents was highly suspect, with strange men helping her all along the way.

"The immigration judge declared that her deliverance from the fighting in Afghanistan was nothing less than a miracle.... she petitioned for her immediate family of eight to join her."

The immigration judge, however, declared that her deliverance from the fighting in Afghanistan was nothing less than a miracle. In granting her asylum, the judge observed that by going from one country to another without travel papers or passport, her story demonstrated that there are angels, guardian angels, in the world (albeit, well-paid Muslim angels). Once she became a lawful permanent resident (LPR) in the United States, she petitioned for her immediate family of eight to join her.

This bewildered young woman made a far more convincing asylum applicant than would her wealthy merchant parents who will thus enter the United States uncontested as LPR family members, on the coattails of their daughter's odyssey.

MORAL: An aura of ambiguity infuses the whole subject of refugees and asylees; the United States needs to work with the United Nations to recast the legal definitions of refugee and asylum-seeker and then stick by those definitions.

Zoroastrian Twin

For several thousand years, Iran (formerly Persia) has been at the crossroads of civilization; in comparison, the United States is a mere upstart. In the case of the

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Zoroastrian Twin, the ancient culture won out over Yankee ingenuity.

In 1979, when the Ayatollah Ruhollah Khomeini returned from exile to establish a fundamentalist government in Iran, thousands of Iranian students demonstrated against the Shah in major cities across the United States. Initially, many wore ski masks alleging fear of the Shah's secret police (SAVAK) which they said was operating in the United States; but on the day that the Shah died, they threw off their masks and marched in jubilation.

During the Iranian take-over of the U.S. Embassy in Tehran, the number of Iranians who claimed U.S. asylum because they were identified with the Peacock Throne of the Shah as relatives, officials, functionaries, or servants reached astronomical proportions. Other than the rebellious college students, few Iranians residing in the United States claimed any affiliation with or even knowledge of the radical Muslim leaders in their homeland.

In 1991, an Iranian student, who had just earned a Ph.D. in engineering in the United States, faced the expiration of his student visa. Realizing that his newly acquired western attitudes would not find favor with the fundamentalist Muslim government in Iran, he decided that rather than return home he would file a claim for asylum in the United States. As grounds, he listed his fear of persecution by the Iranian fundamentalists because of his political support of the Shah. In response, the INS issued him a green card while he awaited his day in immigration court.

Several years passed, but finally the day of his asylum hearing arrived. In testimony, he detailed his activities in support of the Shah, his opposition to the fundamentalist government, and his affiliation with the Zoroastrian religion. This affiliation definitely marked him as a minority, since the Iranian population is 95 percent Shi'ite muslim and 4 percent Sunni muslim, with the remaining 1 percent divided among the Zoroastrian, Jewish, Christian, and Baha'i religions.

Unfortunately for the applicant, the INS attorney assigned to the case had reviewed hours of tapes of Iranian demonstrations and was able to produce not one but three different clearly defined photographs of the applicant demonstrating against the Shah without a ski mask. One photo showed the applicant carrying a crudely written sign supporting the Ayatollah Khomeini — an uncharacteristic action for a Zoroastrian.

The applicant, when confronted with the photographs, studied them for five minutes without saying a word. Finally he spoke: "That's my twin brother," he said, raising his hand to his face. "I am ashamed of him. He is to be pitied. My family has disowned him."

Calmly, the INS attorney asked, "Why is there no mention anywhere in your papers of a twin brother? You are required by law to list all relatives in your papers." The applicant replied in an equally calm voice, "He has been disowned. We never even mention him. He is no longer a family member."

The immigration judge intoned, "I'm afraid he's got you, counselor." The INS attorney asked for a 3-week recess to allow verification of the applicant's statement; the judge denied the request, observing that the application was already three years old. Thus the quick-thinking Iranian engineer is now a lawful permanent resident (LPR) in the United States — assured of life, liberty, and the pursuit of happiness.

MORAL: The INS must verify the grounds for every asylum claim; applicants should not be waiting three years for a hearing, during which time they are taking jobs from U.S. citizens; fraudulent claims delayed are fraudulent claims condoned; expedited hearings are a must.

Laws Need Enforcement

The U.S. Congress and the U.S. Immigration and Naturalization Service (INS) may set numerical caps on legal immigration categories; they may write new reform laws and convoluted rules and regulations; but until they enforce these laws and stop the flow of fraudulent documents, foreign nationals intent on coming to the U.S. at any cost will continue to make a sham of U.S. immigration law.

It is true that each session of Congress layers puzzling legislation upon puzzling legislation, often contradictory, so as to completely negate any serious control of the U.S. borders. Add to this the INS, an agency completely politicized and out of control. Even with amnesty, family unity, refugee exceptions, asylum leniency, and student, tourist, and treaty trader visas, millions of foreign nationals seek admittance into the United States by any means and at any cost.

Fraudulent immigration documents range from complex hightech forgeries to simple passport tampering (the document is slit, a replacement photograph inserted, and the plastic covering resealed). Add "necessity being the mother of invention" to the unbounded and ingenious human mind, and the result is a free market in fraudulent documents operating under the very noses of the U.S. State Department and the INS. TSC

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A Fax on Both Your Houses

An immigration bill as a case study of congressional lobbying & our failing democracy

by Norman Matloff

The irony is pathetic: a piece of legislation whose origins stemmed from the lack of democracy in China turned out to itself typify the failure of the American democratic process.

The Chinese Student Protection Act (CSPA), passed in late 1992 and implemented in July 1993, became a catalog of the failings of Congress — its high susceptibility to intensive lobbying, its unabashed "scratch my back, I'll scratch yours" deal-making, and above all, its indifference toward the American people. It is difficult to ascribe good intentions to Congress, for example, after hearing some members state that this legislation should be kept out of the press because many in the American public would oppose this immigration bill if they knew about it.

Congress passed the CSPA after a highly sophisticated lobbying campaign led by the Independent Federation of Chinese Students and Scholars (IFCSS). The Act granted automatic immigrant status — green cards, objects treasured throughout Asia, the dream of any red-blooded foreign student in the U.S. — to an estimated 80,000 Chinese students and other Chinese nationals who had been in the United States during the student protests in Beijing in 1989. In effect, the students were given blanket political asylum, even though only a very small fraction of them would have qualified for asylum had they applied individually.

Guided by a prominent Washington law firm, the IFCSS conducted a powerfully organized lobbying effort. Using the Internet to coordinate their lobbying activities among Chinese students across the U.S., they inundated House and Senate offices with faxes, jammed White House phone lines, and most importantly, exploited an insider knowledge of the centers of power in Congress.

Interestingly, the story did not end with the CSPA's implementation in 1993. As we will show later, it has continued to have significant after-effects in the years that have followed.

False premises

The Chinese Student Protection Act asserted that it was unsafe for the students to return to China, a claim which was false in most cases. Even Sidney Jones, Executive Director of Asia Watch — the most vigilant of the human-rights organizations monitoring China —has stated that the CSPA was unnecessary. She noted that the only students who would need protection were those high-profile individuals who had made public speeches or had published articles on Chinese politics, who comprised only a small percentage of the Chinese student population in the U.S. And these particular students could have applied for asylum on their own, without the CSPA.

Far from being unsafe, it was commonplace for Chinese students in the U.S. to return to China, say for family visits during summer vacations, and then come back to the U.S. to resume their studies. They did so without incident. An IFCSS document quotes the U.S. Immigration and Naturalization Service as saying,

> *According to a cable from the U.S. Consul in Shanghai, China, over 120 returning [students] ... who had come to China for various reasons were interviewed [as they prepared to go back to the U.S.]. Not one reported any problem with the authorities.*

Amazingly, a clause in the CSPA explicitly included such students, i.e. students who had returned to China for a visit and then come back to the U.S., in its coverage. In other words, Congress

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gave green cards to students who had safely returned to China — on the grounds that they could not safely return to China! The IFCSS, noting the contradiction, broadcast a computer message in October 1992, urging the students to postpone visits back to China until the Act was implemented in 1993, as such visits were greatly undermining the Act's credibility and thus its chances for implementation.

"Congressional supporters of the MFN bill were able to coerce the students into silence by dangling green cards in front of them."

All of this was a far cry from Senator Gorton's claim that the students were afraid to return to China, because to do so would "endanger their very lives." (In a wry postscript after the Act was implemented, the IFCSS, strapped for cash, started running promotions on the Chinese student computer network for bargain airfares to China.)

Congressional coercion

Though people in Congress publicly spoke of the Chinese students in terms approaching sainthood, their private views were quite different. In July 1991 the popular Chinese-language North American newspaper *Sing Tao Daily* had run a front-page article titled, "Congress Criticizes Chinese Students in the U.S. As Selfish, Unsupportive of Human Rights in China." In the article, IFCSS leader Zhao Haiqing reported that there were mounting complaints in Congress that the students had given much more active support to Congresswoman Pelosi's 1989 CSPA-precursor bill (granting temporary residence in the U.S.) than to her bill which conditioned continuation of China's Most Favored Nation (MFN) trade status on improvements in human rights. Congress felt that the students were interested only in green cards, not democracy.

The MFN bill was of high importance to many in Congress. The AFL-CIO was pushing hard for it, and the Democrats were planning to make MFN an issue in the 1992 presidential election campaign, portraying George Bush, who had vetoed the bill in the past, as uncaring of democracy in China. If it were to become known to the general public that even the Chinese students did not support the MFN bill, the case for the bill would be greatly weakened. But congressional supporters of the MFN bill were able to coerce the students into silence, by dangling green cards in front of them.

The acquisition of a green card had long been the goal of Chinese and other foreign students studying high-tech fields in the U.S. Universities in the students' home countries are treated as stepping-stones for eventual emigration. One clever Chinese ditty sung in Taiwan, referring to National Taiwan University (NTU), neatly summarizes the plan as (loosely):

Come, come, come,
Come to NTU!
Go, go, go,
Go to the U.S. too!

However, as the high-tech industries matured in the late 1980s, a former labor shortage became a labor surplus. The situation was particularly acute for students from China, according to an IFCSS memo titled "On the Shortage of Immigrant [Quota] Slots for Chinese Students and Scholars," broadcast on the Chinese student computer network. The IFCSS pointed to the Chinese Student Protection Act as a solution to these problems.

Thus the Chinese Student Protection Act became a carrot (or stick) for the students regarding the MFN bill. In the *Sing Tao* article, Zhao warned the students that passage of the CSPA would be contingent on their support of the MFN bill. The next year, after a meeting with Pelosi, Zhao reported in a computer message that Pelosi had once again reminded Zhao of the connection she expected the students to make between the two bills: she "reiterated...very bluntly: 'You can not argue against [the MFN bill] and only want [the CSPA].'"

While there was some truth to the congressional claims that many students emphasized green cards to the exclusion of all else — financial contributions to the IFCSS dropped sharply after the CSPA was implemented — most students did genuinely believe that threatening to cut trade benefits was not the proper way to press China toward improvements in human rights. Thus, the *Sing Tao* article had noted, many students resented Congress' insisting on the

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MFN-for-CSPA quid pro quo. In fact, polls showed that two-thirds of the Chinese students were opposed to Pelosi's MFN bills.

High-tech lobbying methods

A novel feature of the Chinese students' lobbying campaign for CSPA was the deft use of computer networks. By broadcasting regular announcements over the network, the IFCSS provided telephone and fax numbers of key congresspersons, suggested wording for the messages, and continually exhorted the students to keep up the pressure. At various points during the bill's sojourns through Congressional committees, floor votes and so on, an IFCSS coordinator would, merely by hitting the "Enter" key on his computer, send lobbying instructions to tens of thousands of Chinese students nationwide in a fraction of a second.

When the bill reached the House Judiciary Committee, for instance, the IFCSS sent a message saying, "At this moment, perhaps one of the most critical junctions, we strongly urge students across the country to call/fax [the following congresspersons]... Three members need to be targeted more than others..." Another typical message read, "We need to exert maximum pressure [on] the whole Senate as quickly as possible... Starting tomorrow ... flood every single Senator's office with phone calls and faxes."

Senator Simpson from Wyoming, in an earlier Senate speech, had warned that the Chinese students

> *are tough. They have people who are really setting them up [in their lobbying techniques]. They have fax machines, they have used the computer systems of every major university. I received 1,000 Christmas cards [from Chinese students], and that is more than I get from Wyoming. They are good and they know exactly what they are doing.*

Rep. Conyers of the Black Caucus tried to add a rider to the bill, allowing temporary U.S. residence for Haitian refugees. The IFCSS, fearing that this would kill the bill, immediately mounted a campaign against the rider. The students swamped Congress with phone calls, and meanwhile IFCSS leader Zhao headed straight for Capitol Hill, where he knew exactly which Congressional buttons to push:

> *Immediately after the Judiciary Committee's mark-up, I and Ji Yingquan went to meet with a senior aide of Rules Committee chairman Moakley, briefing him with the current situation, alerting him of the possible problems with the Haitian refugee issue, and expressing clearly our request for a quick vote of closed-rule [which would disallow addition of riders to the bill]. At the same time, I contacted the offices of leadership from both Houses and Senator Kennedy's office regarding the Haitian refugee issue and the perspective of scheduling floor votes before the recess.*

Offended by the Chinese students' apparent lack of sympathy for the Haitians, Rep. Brooks and others in Congress remarked about the injustice of giving 80,000 Chinese permanent U.S. residence while denying 11,000 Haitians even temporary residence. But the IFCSS campaign was successful in the end, and the rider was not added to the bill.

"...the bill should be kept quiet, out of the press, because many Americans would oppose the legislation if they knew about it."

Bill? What Bill?

Perhaps the most egregious action by Congress regarding the Chinese Student Protection Act emerged in a computer message broadcast by Zhao in August 1992. Zhao stated that their key supporters in Congress, as well as their law firm, told them that the bill should be kept quiet, out of the press, because many Americans would oppose the legislation if they knew about it. Thus, no article on the CSPA appeared in major newspapers during the time it was pending in Congress.

One convenient consequence of this lack of publicity was that virtually all the mail received in Congress regarding the bill was from the Chinese students themselves, and thus congresspersons could state, when questioned, "Yes, I support the CSPA. My mail is running heavily in favor of it." When I asked an aide to Senator Bentsen about this distortionary effect of keeping the bill quiet, she became quite indignant. The American populace should indeed have known about the bill, she said, since it was in the Congressional Record! (Or as Marie Antoinette

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might have put it, "Let them read the Congressional Record.")

Again due to the anticipated unpopularity of the bill, the sponsors of the CSPA later made efforts to distance themselves from it. Rep. Pelosi, one of the sponsors of the House version of the bill, had been a freshman in Congress at the time of the 1989 Chinese student movement, and has built her career around legislation concerning China. She has always had extensive press coverage of such legislation, and yet there was nothing from her in the English-language press in the case of the CSPA. Even after the bill was implemented in July 1993, Pelosi's name was absent from a *San Francisco Chronicle* article on the implementation, an absence that normally would seem odd in view of the fact that Pelosi was an author of the bill and was the local San Francisco congresswoman.

Under the guidance of their law firm, Arent Fox, the IFCSS lobbyists became expert spin doctors. In July 1992 they broadcast a computer message informing the students that in lobbying Congress it was crucial to avoid the term "immigration" at all costs. This word vanished from the IFCSS vocabulary from that point onward. For instance, when the CSPA was implemented a year later, and some newspaper articles noted that the implementation came at a time when the Clinton administration was trying to tighten immigration controls, IFCSS President Geng Xiao pointedly explained to the *San Francisco Chronicle* that the CSPA was not an immigration bill, for if it had been one, "it never would have been passed by the House." Statements such as this acquired a rather surreal air to those of us viewing from the sidelines, since IFCSS internal documents had always featured titles like "Report on Immigration Lobbying," and the text of the bill itself repeatedly used the term "immigrant."

Grab some Ph.D.s

Though many Democrats in Congress supported the Chinese Student Protection Act for reasons related to the MFN trade legislation, a number of Republicans saw the CSPA in other terms. The National Science Foundation had been warning Congress of a severe shortage of people with doctorates in science and engineering. Many in Congress saw the CSPA as a solution to this (claimed) shortage, since most of the Chinese students were pursuing graduate degrees in these fields, particularly in the high-tech subjects.

The claim of a shortage has since been discredited, with even the National Science Foundation backing away from it. A recent report by William Massy of Stanford University and Charles Goldman of the RAND Corporation examines the issue in great detail. They find, for instance, that we are overproducing electrical engineering Ph.D.s by 44 percent.

And though Massy and Goldman estimate only a small degree of overproduction of Ph.D.s in computer science, in the sense of unemployment rates, that does not address the main point, which is that while a Ph.D. may be employed, he/she is in almost all cases doing work which does not need a Ph.D.

As Computer Science Professor Anthony Ralston of the State University of New York at Buffalo wrote last year, we are producing

> *more — probably far more — Ph.D.s in computer science than will be able to find the kinds of research jobs which attracted them to seek doctorates in the first place. ...Many of us are, in fact, accepting students under false pretenses.*

Massy and Goldman point out that the production of Ph.D.s in computer science and engineering is geared not to the needs of industry or society, but instead to the universities' own needs, such as to get lucrative federal research grants. The Chinese students exploited this, sending out CSPA lobbying instructions on the computer network:

> *The governors in ... California, Michigan, Wisconsin, Missouri have special influence on President Bush because these states are vital to Bush's re-election campaign. ...[students in these states should] contact deans or presidents in your school and ask them to contact governors' Education Offices. Ask the governors to call President Bush and urge him to sign the bill. ...IFCSS strongly urges students in [these] states ... to "secure the immediate support of your professors, university presidents, and other American friends. If they can ask the senators to put in a good word for us, it will be invaluable."*

Long-term effects

The Chinese Student Protection Act not only was unwarranted and a perversion of the democratic process, but also has had a number of significant indirect consequences since its enactment.

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For example, the present national attention to immigration issues can be traced — in part — back to the Chinese Student Protection Act. Soon after the 1992 passage of the bill, some underworld figures in China spread rumors that anyone who managed to set foot on American soil before the July 1993 implementation of the bill would be given green cards. (This was incorrect. Though it is true that the bill covered non-student Chinese nationals as well as students, it only applied to those present in the U.S. as of April 11, 1990.) Subsequent articles in the Chinese press in the U.S. claimed that these rumors were a major impetus behind the huge influx of illegal-immigrant "boat people" from China around 1993. Further, that claim is made plausible by the timing: The first wave of boats arrived at the end of 1992, a sea-voyage span of time after President Bush's October signing of the bill, and the voyages sharply declined after the bill's July 1993 implementation. Since the arrivals of the boat people on American shores dramatically focused attention on immigration, the impact of the CSPA, if the theory of the effects of the rumors is correct, may be profound.

But in much more concrete terms, the CSPA — and more significantly, the manner in which it was passed — established a permanent body of highly aggressive Chinese in the U.S. who will continue to lobby on immigration-related issues. Many of the Chinese students active in the 1992 CSPA lobbying campaign found the experience empowering and intoxicating, and have eagerly sought out new opportunities for activism since that time.

Their first big opportunity came in 1994. Connie Chung, then Dan Rather's co-anchor for the CBS Evening News, hosted an interview with a former CIA agent who claimed that China was using regular immigration channels to get spies, especially in the high-tech fields, into the U.S. Some former IFCSS activists sprang into action in reaction to Chung's broadcast, complaining that their members would now have trouble finding jobs, since employers would fear that they are spies. Though this claim had some validity, it was quite hypocritical. During their 1992 lobbying efforts for the CSPA, they claimed that the Chinese government had been spying on them in the U.S., but now they dismissed the notion that China might be sending over some spies.

In any case, the activists immediately went into their by-now-familiar mode, coordinating their attack via the Internet. They instructed their members to bombard CBS News President Eric Ober with faxes, and when that failed, they switched the fax blitz to the U.S. Civil Rights Commission. They even had numbers for the commissioners' home fax machines, and sent their faxes there as well. In the end, the commission asked CBS to respond, and Chung issued a "statement of regret."

An even bigger chance for involvement then arose in 1995, when legislation was introduced by Rep. Lamar Smith and Senator Alan Simpson which would have restricted the ability of foreign-nationals to be sponsored for immigration by U.S. high-tech employers. Though the former CSPA activists now had their green cards, large numbers of new Chinese foreign students had come to the U.S. since the 1990 cutoff date of the Act, and thus would be adversely impacted by the new legislation. Under the active and enthusiastic direction of the "CSPA old-timers," the new students organized a campaign in opposition to the Smith and Simpson bills. For example, within just a couple of weeks, they were able to collect 15,000 signatures via the Internet, mostly from Chinese students, for a petition opposing the bills.

A World Wide Web site was set up by Chinese students at UCLA to coordinate the lobbying process against the Simpson bill. Interestingly, it instructed the students to lie when calling Senate offices to lobby:

> *They're not supposed to check up on you. ...Do not worry about your [foreign-student] status. Yes, you are counted as voting citizens because they never bother to ask the status. Therefore, in fact, your voiced opinion is really an American citizen's opinion from their point of view because they cannot tell the difference.*

What does all this say?

The American people have become cynical, even resigned, about politics. The Chinese Student Protection Act, along with its continuing after effects, is a perfect case study of the causes of this despair. It is ironic, to say the least, that an organization originally formed to promote democracy in China has been able to so skillfully exploit the dark side of the American political system. TSC

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Undermining Tibet's Moral Claims

Immigration to the U.S. tends to support China's occupation rationale

by Joseph Fallon

The cause of Tibetan nationalism and independence enjoys highly public and popular American support. But Tibetan activists in the U.S. — and members of Congress who have acceded to their lobbying pressure — are undermining Tibet's moral claim by circum-venting the refugee process and creating a growing flow of Tibetan immigration into America.

Section 134 of the Immigration Act of 1990 — the "Transition for Displaced Tibetans," mocks not only U.S. immigration and refugee laws, but, sadly, the ongoing tragedy of Chinese-occupied Tibet as well.

Tibet, a distinct nation with a history stretching back nearly 2000 years, occupies the Himalayan Plateau in Central Asia. It physically separates China from the Indian subcontinent. Although subject to various degrees of foreign influences over the centuries — Mongol, Manchu, Nepalese, and British — the Tibetan state, which consists of the three historic provinces of Amdo, Kham, and U-Tang, never lost its legal independence.

In 1949, approximately one hundred thousand Chinese Communist troops invaded Tibet and annexed this Buddhist kingdom of barely six million people to Mao Tse-tung's People's Republic of China which numbered half a billion. Not since World War II had a country as large as Tibet, which covers over 500,000 square miles (the size of Austria, France, Germany, Italy, and Switzerland combined) been stripped of its sovereignty.

By 1951, Tibet had been partitioned by the Chinese. Half the country, all of Amdo and much of Kham, was annexed directly to China. A rump Tibet, consisting of U-Tang and the remnant of Kham and which includes the Tibetan capital of Lhasa and the major cities of Shigatse, Gyantse, and Chamdo, became the "Tibet Autonomous Region" of the People's Republic of China.

In 1959, the Tibetans rebelled against Chinese occupation and tried to reestablish the independence of their country. The barbarity with which China crushed this national uprising forced the Dalai Lama, spiritual and political leader of the Tibetan people, and nearly 100,000 Tibetans to flee to India for safety. Accepted as refugees by the Indian government, the Dalai Lama and his followers quickly established a Tibetan government-in-exile at Dharamsala in northern India.

Since 1949, the Chinese occupation of Tibet has been directly responsible for the deaths of more than 1,200,000 Tibetans, one-sixth of that nation's population. Of this number, 433,000 died in combat, including uprisings; 343,000 died as a result of famine; 173,000 died in imprisonment; 157,000 were executed; 93,000 were tortured to death; and 9,000 were driven to suicide.

In addition to this genocide, the Chinese government has pursued ethnocide — the deliberate eradication of a people's national identity. Traditional Tibetan clothing and hairstyles were outlawed. Buddhist texts were burned. Priceless cultural artifacts were either destroyed or stolen and sold in Tokyo and Hong Kong for foreign exchange. Of the 6,254 monasteries and temples which existed in Tibet in 1949, all but eleven were razed to the ground.

Currently, the Chinese practices of genocide and

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ethnocide against the Tibetans are combined in China's population transfer policy which is touted by Beijing as an economic development program. Employing an argument similar to one used by pro-immigration lobbyists in the U.S., Beijing maintains the large scale utilization of skilled and unskilled Chinese immigrant labor in Tibet is essential to the growth and prosperity of the Tibetan economy. Espousing a viewpoint identical to one advanced by multiculturalists in the U.S., Beijing asserts such Chinese immigration has the added social benefit of enriching Tibetan culture by creating cultural diversity. In reality, Beijing's "economic development program" — which actually promotes increased unemployment among Tibetans as native-born Tibetans are fired so that Chinese immigrants can be hired — is a pogrom involving the colonization of Tibet by millions of Chinese.

"Traditional Tibetan clothing and hairstyles were outlawed. Buddhist texts were burned. Priceless cultural artifacts were either destroyed or stolen... Of the 6,254 monasteries and temples which existed in Tibet in 1949, all but eleven were razed to the ground."

To facilitate this colonization, Beijing offers extensive economic, educational, and social benefits to the Chinese who emigrate to Tibet — a policy similar to the wide range of benefits from affirmative action to welfare that Washington offers those from the Third World who immigrate, legally or illegally, to the U.S.

As a result, within the historic borders of Tibet — the Tibet Autonomous Region and the former Tibetan provinces of Amdo and Kham — there are, in addition to six million Tibetans, approximately eight million Chinese. Most Chinese colonists have settled in Amdo and Kham. While few Chinese lived in these two Tibetan provinces before 1950, Chinese now outnumber Tibetans in Amdo by at least three to one, and comprise nearly half the population of Kham. These figures are conservative. They refer only to Chinese settlers and do not include Chinese military personnel or the Chinese prison population.

A further two million Chinese colonists have emigrated to the Tibet Autonomous Region. Lhasa, the Tibetan capital, has 200,000 residents. More than half the population and an overwhelming majority of the merchants are now Chinese. Both Lhasa and Shigatse, the second largest Tibetan city with a population of 50,000, are becoming, architecturally and demographically, indistinguishable from Beijing. Just as in the U.S., Los Angeles is becoming indistinguishable from Mexico City, and Miami more and more resembles Batista's Havana.

After their annexation of Tibet, the Chinese Communists condemned as divisive the idea that Tibetans were a distinct nation just as multiculturalists in the U.S. deny that the U.S. is a distinct nation and condemn the very idea as divisive, if not racist. Since the Tibetan language is a living symbol of the Tibetan nation, Beijing has suppressed Tibetan as the language of the government of Tibet through the promotion of official bilingualism. In purpose and method, this policy resembles the attack launched by the bilingual lobby in the U.S. on English as the language of the government of the U.S. Tibetans have labeled the Chinese policy of official bilingualism in Tibet as "linguicide".

As part of the ongoing attack on Tibetan national identity, the state school system operated by Beijing in Tibet is conducted in the Chinese language and geared exclusively toward Chinese immigrants. It promotes Chinese culture, Chinese history, and Chinese values. Tibetan culture, history, and values, are taught, if at all, as being inferior to the Chinese and destined to be replaced by the latter so that Tibet can be "competitive" in the world economy. A parallel exists with the U.S. public school system where the national identity of the U.S. is attacked by denigrating its language, history, culture, and values, and promoting those of Third World immigrants.

For nearly forty years, the Tibetan government-in-exile of the Dalai Lama residing in Dharamsala, India has been documenting the ongoing tragedy in

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Tibet. There in northern India the Dalai Lama's government has preserved Tibet's national identity, cultural heritage, and Buddhist beliefs.

But it has also introduced many social and political reforms directly affecting the lives of Tibetan refugees including a medical institute, a department of health which operates sixty-six primary health care centers, a mass education system based upon the British version used in India, a draft constitution, and an elected parliament. The government possesses no police or military forces. Its operating income is derived solely from an annual voluntary tax, business revenue, and donations. Independent publications in Tibetan, Chinese, and English and an independent opposition political party, the National Democratic Party of Tibet, attest to the existence of freedom of the press and freedom of speech.

There are an estimated 130,000 Tibetan refugees worldwide with 98 percent living in the three countries on Tibet's southern border: India (77 percent), Nepal (19 percent), and Bhutan (2 percent). While a few Tibetan exiles possess foreign passports, most hold registration certificates from India.

For nearly forty years, Tibetans fleeing Chinese persecution have sought and been granted asylum in India and Nepal. Once in those countries, assistance has been provided these refugees by the Tibetan government-in-exile.

Under those conditions, Tibetans have no legal right to be admitted to the U.S. as refugees. However, since Congress was intent on admitting them as such, Section 134 of the Immigration Act of 1990 was enacted to solve that problem.

By this law, Congress defined Tibetans living in India and Nepal as "displaced" persons, historically a synonym for refugees; classified them as "immigrants" for purposes of admissions; but treated those Tibetans as de facto refugees by granting them special admissions outside the normal quotas.

For the 1991, 1992, and 1993 fiscal years, a total of 1,000 immigration visas were made available to Tibetans living in India and Nepal. Those resettled in the U.S. can be expected to petition the Immigration and Naturalization Service to have family members admitted under "family reunification." Those family members will, in turn, petition to have their family members admitted, and so on, and so on.

The purpose of this migration was spelled out in the January-April 1992 issue of *News Tibet*, a publication of the Office of Tibet, as "the development of Tibetan identity in exile at 15 cluster sites in the United States." Clustering refers to the policy of resettling Tibetans in "sufficient geographic concentration for maintaining social cohesion, Tibetan ethnic identity, and easy access to centrally located resettlement services." This defines the very essence of colonization.

Directed by the Tibetan U.S. Resettlement Project, a coalition of Tibetan and U.S. organizations with which the Tibetan government-in-exile works closely, initial cluster sites are being established in Boston, MA, Amherst, MA, New York, NY, Ithaca, NY, Darien, CT, Madison, WS, Minneapolis/St. Paul, MN, Chicago, IL, Salt Lake City, UT, Boise, ID, Santa Fe, NM, Missoula, MT, Portland, OR, Seattle WA, and San Francisco, CA.

"...Tibetans have no legal right to be admitted to the U.S. as refugees. However, since Congress was intent on admitting them as such, Section 134 of the Immigration Act of 1990 was enacted to solve that problem."

According to this *News Tibet* article which is entitled "Beyond the Melting Pot," "the goal is thus to create a national network of small Tibetan communities, building up over time the educational, economic and technical resources needed for developing Tibetan culture in contemporary American society."

This will be achieved, the article insists, because the "melting pot idea" that immigrants assimilate and become Americans is a "largely discredited belief system" which has broken down under the impact of nearly thirty years of massive Third World immigration. The U.S., it asserts, is being transformed into a "multi-cultural mosaic".

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This transformation is considered a positive development by the article because:

> *many generations of melting pot immigrants did not realize what they lost: the extended family, the bond of continuity between the generations, the unifying influence of religious faith and tradition, the spiritual sense of the whole interrelated fabric of life which for so long had sustained previous generations and enabled them to stay together as a people.*

Since nearly 90 percent of all the immigrants legally admitted to the U.S. between 1820 and 1967, the years of the "melting pot," were from Europe and Canada, these words, which appear in an official publication of the Tibetan government-in-exile, a government that publicly espouses "compassion" and "understanding," reveal not just an ignorance of the cultures, traditions, religious beliefs, family bonds, and immigration experiences of European-Americans, but a contempt for European-Americans as a people.

For European-Americans are the American nation. Prior to the 1965 Immigration Act they were approximately 90 percent of the U.S. population, and even today, after decades of an essentially "Third World only" immigration policy by the U.S. government, European-Americans still constitute nearly 75 percent of the population.

Furthermore, by pursuing Tibetan resettlement in the U.S., Tibetan activists, the Tibetan government-in-exile and their Congressional supporters undermine the credibility and the morality of the cause of Tibetan independence.

If the transformation of the U.S. into a "multi-cultural mosaic" is as desirable as Tibetans insist, then why should European-Americans oppose the transformation of Tibet into a "multi-cultural mosaic"? If Third World immigration is good for the U.S., then Chinese immigration is good for Tibet. If official bilingualism is good for the U.S., then official bilingualism is good for Tibet. If national deconstruction and cultural relativism is good for the U.S., then national deconstruction and cultural relativism is good for Tibet.

Supporters of Tibetan independence must recognize that the U.S., like Tibet, is a distinct nation with the legal and moral right to preserve its ethnic, cultural, and religious identity. Sadly, as Section 134 of the Immigration Act of 1990 shows, among those who need to be persuaded that the United States is a historic nation, and not an ideological abstraction, are the members of the U.S. Congress. TSC

Asylum Reform Needed

The system is broken and needs fixing

by Jack Martin

Since adoption of the Refugee and Asylum Act in 1980 over one million asylum claims have been filed with the Immigration and Naturalization Service. This number does not include the defensive asylum claims filed with judges hearing deportation cases. The 1980 Act contemplated a maximum number of 5,000 asylees accorded legal permanent residence (LPR) status in any year. Between 1980 and 1990 this would have allowed a maximum of 55,000. With the increased ceiling to 10,000 in 1991, this allowed an additional 50,000 or a total to date of 105,000. Therefore, asylum applicants have exceeded the entry limit by about 900,000. This raises the question of whether the system is adequate to meet the real needs of asylum claimants, or whether the nature of the asylum claim is so problematic that it is subject to widespread abuse.

The upward trend in the number of asylum applications and the number of approvals led to the 1990 doubling of the statutory ceiling on asylee

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Jack Martin is Special Projects Director for FAIR, the Federation for American Immigration Reform. This article is taken from testimony given June 12, 1996 on behalf of FAIR before the Jordan Commission on Immigration Reform.

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adjustments. Through FY'95, INS statistics show that the total number of adjustments of asylum recipients to LPR status since FY'80 number 102,601, an average of over 6,400 per year. Unlike the limit on refugee admissions, which has been adjusted on an annual basis, the ceiling on asylum adjustments has operated as a ceiling, and has been changed only once. Adjustments to LPR status in excess of the limit become a backlog and that is likely to be the case again this year, despite the higher ceiling.

"This statistical review suggests that asylum is still one of the out-of-control aspects of current immigration policy."

The percentage of approved asylum cases in the INS system, when compared to the total adjudications, has varied between 55 percent (1980) and 15 percent (1990). This statistic ignores closed cases resulting from the death of an applicant, other LPR adjustment, withdrawn application or the applicant failing to appear. Since FY'80, there have been 339,677 cases adjudicated (24% approved) and 339,065 otherwise closed.

There is a difference between the total asylum cases approved by the INS over the past 16 years (81,980) and the number adjusted to LPR status during that period (102,601). The difference is explained by the fact that an approved asylum case may include more than one person, and the fact that defensive asylum claims made before immigration judges in deportation cases, if approved, also enter the adjustment stream.

A further meaningful measure of the asylum process concerns the inability of the INS to keep up with asylum claims. Between 1984 and 1989 the INS was completing more cases than were filed each year, *i.e.*, preventing or reducing the backlog, although as already noted a large share of those cases were closed rather than adjudicated. Beginning in 1990, the number of new claims began to exceed the number of new applications. Denials dropped from a high of over 30,000 in 1984 and 1989 to less than 5,000 in 1991, and 7,000 in 1992. Meanwhile, detention space for asylum applicants was inadequate to hold the increasing number of new cases, so asylum applicants were being routinely paroled into the country with only cursory inspection and were issued a work permit. The message broadcast overseas was that the fast route into the United States for those seeking to start a new life, and otherwise ineligible to immigrate, was to request asylum. Asylum applications, that had averaged less than 44,000 per year from 1980 to 1991, zoomed to an average of 136,000 over the next four years. According to an INS Fact Sheet dated January 4, 1996,

> *In 1993, the United States' asylum system was in crisis...the program had become a magnet for abuse. Attracted by the easy availability of work authorization and often lured by unscrupulous profiteers, the system was clogged by people submitting false applications solely for the purpose of getting work authorization.*

Backlogged asylum cases in the INS system numbered over 219,000 at the beginning of FY'93. At the start of FY'95 that backlog was 422,000. Despite a record number of completed cases last year, a record number of applications was also filed, and the backlog numbered over 455,000 at the beginning of the current fiscal year.

On the surface, this statistical review suggests that asylum is still one of the out-of-control aspects of current immigration policy. However, in light of INS assertions that it has turned the corner on the problem and is now managing asylum cases in a fashion that discourages fraudulent claims and will eliminate the backlog, the data merit a closer look.

The Issues

There are two primary issues that should be considered in a focus on the operation of our asylum policy and the need for any change in it.

The first is one that would be widely accepted: how can our asylum policy discourage fraudulent asylum claims while not restricting access for valid asylum claimants? This has been the focus of the Administration — and FAIR supports this objective, although it would differ on how to achieve it.

The other issue would be more controversial: should the United States expand the coverage of its asylum policy to new categories of non-traditional cases that will have the effect of increasing the

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overall number of asylum applications and permanently resettled aliens? It is not clear whether the Administration has addressed this question, but its actions indicate that it would support this objective. FAIR would oppose this trend for two reasons. First, the non-traditional areas into which asylum coverage is expanding are ones that are more difficult to decide objectively on a case-by-case basis as to whether there is a well-founded fear of persecution, thereby providing an incentive to individuals to attempt to make fraudulent claims and alien smugglers to coach their clients to do so. Second, a policy that expands asylum admissions is not in the national interest of a lower overall level of immigration.

Recent Changes

LEGISLATION

The Administration launched an effort at asylum reform on July 27, 1993 as part of a number of measures to better control illegal immigration. The legislative initiative had been crafted with important input from David Martin, subsequently appointed INS General Counsel. The measure was introduced by Senator Kennedy as S. 1333. Key provisions established an expedited screening and exclusion process for those not presenting a prima facie, non-frivolous asylum claim.

ADMINISTRATIVE MEASURES

In February, 1994, the INS announced a series of administrative measures designed to better control abuse of the asylum system. This new approach was described as intended to supplement the legislative proposal for expedited exclusion procedures. But, rather than supplement asylum reform efforts, this signalled the end of interest in expedited exclusion procedures for asylum applicants, except for special "emergency" measures. Without publicly saying so, the Administration had abandoned its legislative initiative without ever explaining what analysis led them to back away from the conviction that these measures were appropriate and needed.

The new administrative procedures package, once again crafted for INS by David Martin, included the following provisions:

- refusal of "boilerplate" asylum applications;
- fingerprinting asylum applicants and checking for criminal records;
- doubling the Asylum Corps to 334 to process 150,000 applications on a current basis;
- increasing the immigration judge staffing;
- withholding work permits for five months unless granted asylum earlier;
- developing reciprocal policies for returning asylum applicants to safe countries;
- charging a fee of $130 for asylum claim processing.

In June, Attorney General Reno outlined a request for additional funds and personnel resources to implement this plan. The FY'95 appropriation bill included a 29 percent increase in funding and the necessary personnel authority to implement the plan. The new regulations took effect in January of 1995, after dropping the $130 application fee.

Fiscal Year 1995 Results

The new administrative remedial measures, especially withholding the work permit, have decreased the number of affirmative asylum applications (when allowance is made for non-recurring filings under the ABC case). But, even if most Salvadoran asylum applicants in FY'95 were ABC applications, which they most certainly were not, the over 77,000 new asylum applications from other countries exceeded the cases adjudicated. Furthermore, adjudication numbers are inflated under the new procedures, because the Asylum Office now counts as refusals those cases denied without an interview and sent for a hearing to an immigration judge.

If new Salvadoran asylum cases are estimated at about 15,000 (between the FY'94 and FY'93 levels) the total of new cases in FY'95 would have been 92,336, a decrease of about 36 percent from FY'94. However, even with the expedited process of handling apparently meritless cases, the adjudicated cases numbered only 48,259. An additional 54,169 were otherwise closed (the data do not reflect how many were closed as a result of the alien's failure to respond to the hearing notification). With these additional closed cases, the result is a decrease in the backlog by about 24,000 cases. Given the backlog at the beginning of FY'96 of 457,670, at this rate of reduction it would require over 19 years to eliminate the backlog — if the same rate of applications and processing held constant.

Before becoming enthused over the drop in asylum applications over the past year, the experience with the IRCA-adopted employer

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sanctions should be remembered. In the first year (from FY'86 to FY'87) apprehensions of illegal aliens — mostly Mexicans at the southern border — declined by 33 percent. The apprehensions continued to decrease over the next two years — by 15 percent and five percent, respectively — before they resumed their historic upward climb. We know now that the opportunity to permanently reduce illegal immigration by way of employer sanctions was lost at that time because effective document screening and enforcement capabilities were lacking.

"...a further move in the direction of broadening the scope of our asylum protection far beyond what was contemplated or legislated by Congress."

Did the reduction in new asylum applicants, from the nearly 145,000 in FY'94, largely eliminate persons fraudulently trying to circumvent our normal refugee or immigrant screening system? No, that was not the case. In FY'95, over three new applications were turned down for every one approved during the year (excluding the possible ABC cases). It should be noted that the number of approvals (12,477) exceeds the 10,000 ceiling on adjustments even without including eligible family members. If approvals at a similar ratio continue, and new applicants arrive at a similar or higher rate, a major backlog will again develop of asylum recipients waiting to adjust to LPR status.

It is also important to remember that the ability of the asylum corps to continue to process cases at the FY'95 rate is dependent on their not becoming diverted to other more pressing responsibilities, as they were recently when the Administration was trying to cope with the Haitian and Cuban boat influxes. A similar diversion of effort could recur in the Caribbean or the land border with Mexico. Further, there is no reason to conclude that the decrease in new (non-ABC) cases will decline or even hold at the FY'95 level. The trend line has been one of increase and there is no reason to think that this upward pressure may diminish.

The Expanding Scope of Asylum

Concurrently with the above outlined efforts to discourage asylum abuse, the courts and the Administration have been focussing on a number of non-traditional asylum cases and deciding that the scope of asylum protection should be broadened to accommodate a number of new concepts.

The clearest example of the expansion in asylum coverage is the adoption of sexual preference grounds as a basis for asylum protection. In June, 1994, Attorney General Reno designated as a precedent a BIA (Board of Immigration Appeals) decision that found gays and lesbians eligible for asylum protection as members of a "particular social group."

The most recent initiative by the INS, *i.e.*, requesting that the BIA provide guidelines for favorable consideration of asylum claims on the basis of female genital mutilation (FGM), is a further move in the direction of broadening the scope of our asylum protection far beyond what was contemplated or legislated by Congress. That this is being done without regard to a strict reading of the law may be seen in the argumentation of INS General Counsel Martin, who wrote, even as he asked the BIA on February 28, 1996 to announce an expansion of asylum jurisdiction to cover FGM cases,

> *There is no indication that in enacting INA 208 and 243(h) Congress considered application of these sections to broad cultural practices of the type involved here.*

Although not providing similar protection for Chinese who allege fear of persecution related to China's family planning policy, the INS in August 1994 endorsed stays of deportation for those making such claims who are not granted asylum. The effect of this decision, which it was reported at the time of issuance, could apply immediately to as many as 1,000 persons (Interpreter Releases p. 1056), appears to be the creation of a new informal Deferred Enforcement of Departure program without the participation of Congress.

What should be focussed on is the fact that this stretching process has no obvious limit and that it is being done without reference to Congress. The number of asylum applicants converted to permanent residence is limited by the current

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10,000 adjustment ceiling, but in light of the doubling of that limit in 1990, and the possibility that additional claimants in excess of that number may be left to reside indefinitely in the United States on the basis of withheld deportation, that ceiling does not appear to represent a firm boundary.

Terrorism Prevention Bill Provisions

The Terrorism Prevention Act amendment of section 235 (b) of the INA provided for port of entry screening of asylum applicants by an asylum officer, reviewed by a supervisory asylum officer, and not subject to administrative appeal.

This provision is similar to the Administration's proposed S.1333 provision cited earlier, except that in that legislation the reviewing asylum authority would have had to come from other than the Asylum Corps.

"...the opportunity to permanently reduce illegal immigration by way of employer sanctions was lost ... because enforcement capabilities were lacking."

The implementation of the new 235 (b) provision will streamline the hearing and exclusion process for those who arrive with fraudulent (or no) entry documents and who do not establish credible fear of persecution. Instead of months or years of review, exclusion will take place at the port of entry in hours or days. We are convinced that this reformed procedure offers the INS a better chance of getting on top of new asylum cases and provide the opportunity to begin eliminating the backlog.

Recommendations

The Federation for American Immigration Reform makes the following recommendations to the Commission:

Recommendation I — Support the Streamlined Asylum Process of the Terrorism Prevention Act. Asylum remains out of control despite major remedial efforts of the Administration. The problem will worsen, because the INS is inviting new gender and sexual preference cases. The Terrorism Act's expedited exclusion measure is needed, and should be allowed to go into force. The Administration and the Senate and House conferees deliberating this issue should be informed now, while it is being decided, that the Commission opposes enactment of the Leahy Amendment, which would reestablish the status quo ante. This will accomplish the following objectives:

- Discourage fraudulent asylum claims by implementing expeditious exclusion of claimants at the airports without their having gained their objective of access into the United States;
- Reduce the number of asylum grantees.

Recommendation II — End the Current Advantage Given to Asylum Applicants Over Refugees. Asylum should protect aliens already admitted to the United States who face circumstances in their home country which arose after they came here that cause them to fear persecution if they return. By accepting applications from persons at ports of entry, we have given asylum applicants an advantage over refugees. They gain access into the United States without screening as well as access to counsel and to the U.S. legal system to argue their case. These persons should be required to make their case for refugee protection from abroad. The exception should be only those non-refoulement cases in which the applicant has travelled directly and continuously from the home country to the United States. This will accomplish the following objectives:

- Decrease the potential of asylum applicants from countries where poor human rights conditions exist to gain favorable consideration of their claims on the general conditions in their country, rather than on the basis of the individual circumstances they would face if they were returned;
- Eliminate legalistic delaying tactics in immigration hearings.

Recommendation III — Call for Congress to Restate a Narrow Asylum Scope. The courts, with the active participation of the Administration, have stretched asylum coverage to cases never contemplated in the law. Congress should be asked to stop this expansion by re-delineating the boundary. We do not accept refugees seeking protection from societal practices or prejudices, so

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we should not accept these claims from asylum applicants. This will accomplish the following objective:

• Assure that the asylum law embodies not just international standards for the protection of individuals, but also standards that will be supported by the American public over the long run.

Recommendation IV — End Asylee Adjustments to Permanent Residency to Underscore the Difference between Refugee and Asylum Protection. Refugee screening seeks those who require permanent resettlement, not just temporary protection. Asylees are not similarly screened. It is appropriate, therefore, to accord them temporary protection until such time that they may safely return to their native country, rather than adjustment to LPR status.This will accomplish the following objective:

• Allow the system to respond to rapidly changing conditions in political or social regimes that are not locked in time, as used to be more common. An example is the change in conditions in China that have led many Chinese students, who were granted residence under the Chinese Student Adjustment Act, to return on visits to mainland China. It suggests that temporary protection could have served the purpose of protection without the need for a distortion to our immigration law to accord the students permanent residence.

Recommendation V — End Automatic Adjustment to Permanent Residence for Cubans. We believe the Cuban Adjustment Act is discriminatory and wrong and should be repealed. But, if Congress is only prepared to drop the Cuban Adjustment Act when Cuba is no longer a communist dictatorship, then the Act should be amended so that Cubans are only offered temporary protection, not routine adjustment to permanent residence.

Recommendation VI — Support Other Measures. Actions now pending in either the Senate or House bills to reform illegal immigration would address the following issues:

• Limit the Attorney General's excessive authority to parole aliens into the country;

• Bar from later immigration those who make frivolous asylum applications as well as "no-shows" — those who fail to appear for a scheduled hearing.

Subsequent Actions by the Congress, the INS, and the Commission on Immigration Reform

The major immigration reform effort of the last Congress (the Illegal Immigration Reform and Immigrant Responsibility Act), which failed to address needed legal immigration reform, nevertheless further amended the expedited exclusion process that had just been adopted in the Terrorism Prevention Act. In the current system that went into effect on April 1, 1997 section 235 (b) provides for the detention of asylum applicants and their speedy screening by the INS Asylum Officer corps. Decision of an Asylum Officer to exclude an alien who requests asylum may be appealed to an Immigration Judge. The alien may contact relatives, friends and legal advisors in this country. If the Asylum Officer's decision that the person does not have a credible fear of persecution is upheld by the Immigration Judge, that ends the appeal process and the alien is put into exclusion proceedings.

This sytem is similar in nature to the one which FAIR urged, and it is one of the positive legislative developments achieved last year.

Immigrant advocacy groups and civil liberties organizations immediately filed suit to block implementation of the new law. However, they were unable to obtain an injunction against its implementation, and as of this writing, it has been in effect for three months. The INS has just issued a report based on the first three months which argues that the new process is working smoothly and effectively. Although statistics on the process are not yet reliable, the number of aliens arriving at the nation's 25 largest ports of entry who have requested asylum have numbered only about 60 per week. Of those, about 80 percent have received a favorable finding of "credible fear" and only "a handful" of the applications that have been rejected by Asylum Officers have been reversed on appeal to the Immigration Judges. The average processing time from entry to final decision on the asylum cases has been 32 days. This experience appears to justify our conviction that expedited exclusion will be effective in separating legitimate asylum claimants from aliens who are attempting to use the procedure for fraudulent entry.

In June, before this INS data was available, the Commission on Immigration Reform released its

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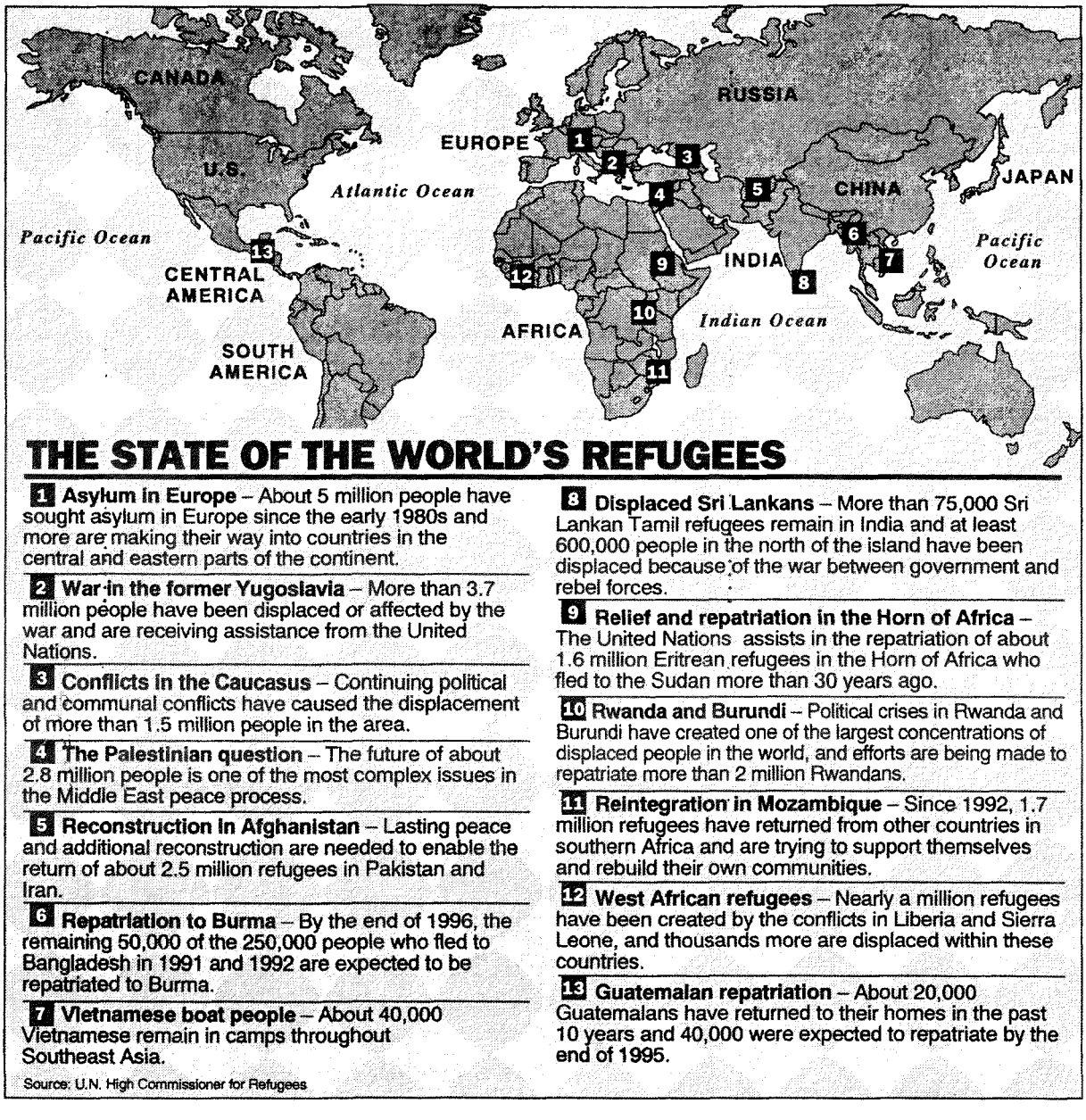
recommendations of refugee and asylum policy. Unfortunately, it failed to incorporate most of FAIR's recommendations. Most unhelpfully, it revived the concept, earlier advanced by the Clinton Administration, that expedited exclusion be limited to mass migration emergencies. With the INS now claiming success with the new ongoing system, this recommendation will hopefully fall on deaf ears. The Commission entirely sidestepped the issue of the expanding scope of asylum protection, and FAIR will comntinue to support legislative efforts to achieve a narrowed scope that will keep asylum cases to a minimum. Nevertheless, the Commission did indirectly support FAIR's call for an end to Cold War-era refugee policies, such as the Cuban Adjustment Act.

This, however, will also require congressional action. TSC



THE STATE OF THE WORLD'S REFUGEES

1 Asylum in Europe – About 5 million people have sought asylum in Europe since the early 1980s and more are making their way into countries in the central and eastern parts of the continent.

2 War in the former Yugoslavia – More than 3.7 million people have been displaced or affected by the war and are receiving assistance from the United Nations.

3 Conflicts in the Caucasus – Continuing political and communal conflicts have caused the displacement of more than 1.5 million people in the area.

4 The Palestinian question – The future of about 2.8 million people is one of the most complex issues in the Middle East peace process.

5 Reconstruction in Afghanistan – Lasting peace and additional reconstruction are needed to enable the return of about 2.5 million refugees in Pakistan and Iran.

6 Repatriation to Burma – By the end of 1996, the remaining 50,000 of the 250,000 people who fled to Bangladesh in 1991 and 1992 are expected to be repatriated to Burma.

7 Vietnamese boat people – About 40,000 Vietnamese remain in camps throughout Southeast Asia.

8 Displaced Sri Lankans – More than 75,000 Sri Lankan Tamil refugees remain in India and at least 600,000 people in the north of the island have been displaced because of the war between government and rebel forces.

9 Relief and repatriation in the Horn of Africa – The United Nations assists in the repatriation of about 1.6 million Eritrean refugees in the Horn of Africa who fled to the Sudan more than 30 years ago.

10 Rwanda and Burundi – Political crises in Rwanda and Burundi have created one of the largest concentrations of displaced people in the world, and efforts are being made to repatriate more than 2 million Rwandans.

11 Reintegration in Mozambique – Since 1992, 1.7 million refugees have returned from other countries in southern Africa and are trying to support themselves and rebuild their own communities.

12 West African refugees – Nearly a million refugees have been created by the conflicts in Liberia and Sierra Leone, and thousands more are displaced within these countries.

13 Guatemalan repatriation – About 20,000 Guatemalans have returned to their homes in the past 10 years and 40,000 were expected to repatriate by the end of 1995.

Source: U.N. High Commissioner for Refugees

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Asylum and Refugee Programs

Some recommended reforms

by William Chip

During FY 1996, 129,579 cases for asylum in the United States were filed (many of which would involve more than one person) and 455,725 cases were pending. Unless asylum opportunities for aliens who enter the U.S. without a visa are substantially circumscribed, the number of applicants will continue to overwhelm the government's ability to make prompt and accurate adjudications. Although some of the needed restrictions might require statutory change, there is much that can be done by (1) regulating the procedures for application and (2) exercising discretion in the granting of applications. The proposed rule, in its present form, is a missed opportunity in that regard.

The Attorney General's authority to grant asylum derives from [United States Code] 8 U.S.C. § 1158 (a), which provides that the Attorney General shall establish an "asylum application procedure" for aliens "physically present in the United States or at a land border or port of entry." An alien may be granted asylum only if he is a "refugee," defined by 8 U.S.C. § 1101 (a) (24) (A) as a person unable or unwilling to return to his home country "because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion."

8 U.S.C. § 1158 (a) provides that aliens who qualify as refugees and apply for asylum "may" be granted asylum "in the discretion of the Attorney General." There is no statutory right to asylum, only a right to apply for it [*INS v. Cardoza-Fonseca*, 480 U.S. 421, 444 (1986)]. Moreover, asylum may be terminated by the Attorney General if the alien ceases to be a refugee owing to a "change in circumstances" [8 U.S.C. § 1158 (b)].

Although the grant or denial of asylum is discretionary, an alien who is present in the United States may not be returned or deported to any country if the Attorney General determines that the alien's "life or freedom" would be threatened there [8 U.S.C. §1253 (h)]. Because not all forms of "persecution" constitute a threat to an alien's "life or freedom," the severity of the persecution that precludes the return of an alien under 8 U.S.C. § 1253 (h) is generally greater than what would meet the minimum eligibility requirements for asylum [*INS v. Stevic*, 467 U.S. 407, 428 (1983)].

The statutory mandate to establish an asylum procedure was part of the Refugee Act of 1980. The principal purpose of the Refugee Act was to replace "the piecemeal approach of our government reacting to individual refugee crises" with a "permanent and systematic procedure for the admission to this country of refugees" [S. Rep. No. 256, 96 Cong., lst Sess. 3 (1979)]. The "permanent and systematic procedure" for refugee admissions is governed by 8 U.S.C. § 1157, which provides that the President, in consultation with Congress, will determine the number of refugees to be admitted each year.

Although the Refugee Act mandates the establishment of an "asylum application procedure," the Attorney General is empowered with complete discretion over the granting and denial of asylum. As a practical matter, this discretion has not been exercised. Under current asylum policy any alien is permitted to remain who manages to obtain a

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"presence" in the United States and can establish a well-founded fear of persecution, without regard to how the alien acquired his "presence," and without regard to the number of aliens receiving asylum. Grants of asylum are "indefinite" and are almost never withdrawn, even when the threat of persecution has abated.

Considering this open-ended approach to granting asylum, the *1991 World Refugee Report* of the Federation for American Immigration Reform (FAIR) warned that the asylum procedure "has been expanded far beyond its intended purpose to benefit hundreds of thousands of persons who cannot satisfy the requirements for entry into the U.S. either as immigrants or refugees." For example, refugees who are not selected for admission under the refugee program can "end run" the program by entering the U.S. illegally and applying for asylum here. Even worse, aliens who are not refugees at all can use the asylum procedure as a de facto immigration lottery, betting the price of a plane ticket and a counterfeit visa on their chances of hoodwinking an asylum officer or disappearing into the woodwork while their claims are being adjudicated. Asylum fraud is being fostered and facilitated by what amounts to an overseas industry in the invention of false asylum claims and the manufacture of false entry documents.

"aliens who are not refugees at all can use the asylum procedure as a de facto immigration lottery, betting the price of a plane ticket and a counterfeit visa on their chances of hoodwinking an asylum officer or disappearing into the woodwork while their claims are being adjudicated."

The legislative history of the Refugee Act explicitly states that qualification of an alien as a refugee would not guarantee resettlement in the U.S. and that Congress did not intend to create "a new and expanded means of entry" for aliens not admitted as refugees [H.R.Rep. No. 608, 96th Cong., lst Sess. 10 (1979)]. Yet, a "new and expanded means of entry" is exactly the consequence of an asylum program that signals to aliens who are ineligible to immigrate and who are not selected for admission under the refugee program that they can obtain admission anyway by entering illegally and asking for asylum.

The refugee program affords all aliens who have fled their country to escape persecution the opportunity to be selected for admission as refugees. In a number of Presidentially-designated countries, aliens threatened by persecution can apply without even leaving their country. Asylum should be reserved for the two situations to which the refugee program is applicable: (1) where the alien was legally in the U.S. when the threat of persecution arose in his own country, or (2) where the alien fled to a country other than the U.S. from a country that was not Presidentially-designated for direct refugee admissions. Aliens who flee to a country other than the U.S., where they would be safe from persecution, should not be given access to the U.S. except through the refugee program. Aliens who flee directly to the U.S. should be obligated to make their claims upon entering the U.S.

While the Attorney General has discretion to grant asylum to aliens fleeing any form or degree of persecution, holding out the prospect of asylum to all of the world's six billion people who feel threatened by persecution is a commitment that goes well beyond what can be realistically accomplished with the resources that Congress is ever likely to commit to the asylum program. To discourage illegal immigration, grants for asylum to aliens who arrive in the U.S. without a lawfully obtained visa should be limited to those whose persecution was so severe that it could not reasonably be endured. The "life of freedom" standard of 8 U.S.C. § 1253 (h) could be applied for this purpose. Moreover, if an asylum officer denies an application on the basis that the alien's "life of freedom" would not be threatened in his own country, that finding should be binding in any subsequent exclusion or deportation proceeding unless the immigration judge determines that the asylum officer's decision was arbitrary or capricious.

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The basic elements of a sound and reasonable refugee/asylum policy can be summarized as follows:

- Grant asylum only to applicants who (a) are legally in the United States when the circumstances giving rise to refugee status first occur, and (b) to aliens who flee directly to the United States, *i.e.*, without traveling through another country where the alien would be safe from persecution.

- In the case of aliens who enter the U.S. without a lawfully obtained visa, limit asylum to those whose "life or freedom" was or would be threatened in their own countries.

- Deny asylum to any non-immigrant alien who enters the U.S. legally but fails to claim asylum before his term of admission expires.

- Deny asylum to any alien who enters the U.S. without a lawfully obtained visa unless he applies at the time of entry.

Requirements as to *when* an alien must apply for asylum are well within the Attorney General's authority to establish an asylum "application procedure." Limitations on *which* applicants will be granted asylum are an exercise of discretion that is also within the Attorney General's authority. Although that discretion may not be exercised in an arbitrary and capricious way, uniformly applied limitations intended to make the system workable and consistent with the refugee program are clearly lawful [*Hintopoulos v. Shaughnessy*, 353 U.S. 72, 78 (1956)].

The proposed limitations are not draconian — 8 U.S.C. §1253 (h) would continue to preclude sending an alien to a country where his life or freedom would be threatened. The limitations could be implemented on an indefinite basis, or as a temporary measure until the backlog of applications was eliminated and the integrity of the system restored. The Attorney General could retain discretion to authorize exceptions to these limitations under extraordinary circumstances. TSC

Alan Nelson Remembered

by Roger Conner

I note with sadness that Al Nelson passed away January 29, 1997. When he was first proposed to head the Immigration and Naturalization Service (INS) in 1981, I opposed his nomination. Nelson was an unknown, but we thought he was a powerless no-name — not what we needed at INS. We could not have been more wrong. As an individual he was personally committed to immigration control and reform. As a bureaucrat he was a well-connected, tenacious fighter for the policies he believed in. He battled all comers, whether it was the media critics of INS or the open-border advocates within his own administration.

Washington, D.C., is full of people who operate like sail boats: they constantly run with the prevailing politcial winds. Nelson was more like a power boat, moving toward his target without regard to the polls, the pundits or the powerful.

Being director of the INS during the 1980s was a thankless job. The agency was a mess and Congress kept piling on more and conflicting demands while resources were growing at a much more modest pace. Any improvements he made, and there were many, were dwarfed by the escalating demands of border enforcement and the newly adopted Immigration Reform and Control Act.

Perhaps the best measure of Nelson's personal commitment to immigration reform was what he did after leaving office. Rather than cash in on his knowledge and history by joining the immigration lawyers' lobby on the other side, he went to California and continued his work for immigration reform. Indeed, he helped ignite the most powerful grassroots rebellion on immigration issues in this half-century, Proposition 187.

We remember Al Nelson and we mourn this loss — a loss not only to his family and friends, but to the larger immigration reform movement.

Roger Conner was executive director of the Federation for American Immigration Reform for its first ten years. He currently directs The Center for the Community Interest, a project of the American Alliance for Rights and Responsibilities.

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The 'Dominican Vespers'

The cultural roots of U.S. immigrants from the Dominican Republic

by Kevin Jenks

The bloodbath came unheralded. At places all along the border, and deep within their country, too, the killers struck — armed with machetes, armed with bayonets, armed with knives — at the despised foreign intruders. They dragged their helpless victims from their huts and cut them down in the muddy yards as scrawny chickens scattered. The attackers spared few words on their prey; but one word — *perejil*, "parsley" — recurred, enigmatically, repeatedly, a subtle spice for a slaughter.

Again and again the blades stabbed and slashed; the peasant shirts of slaughterer and slaughtered alike grew spattered or soaked in blood. Before a week was gone, uncounted thousands lay dead in the countryside that grim October, sixty years ago this autumn.

The year 1937 is generally accounted a harsh one in the history of mankind's tenancy of the planet. It saw depression in the democracies, the rise of the totalitarian powers, civil war in Spain, total war in China — but these knives hadn't flashed in Nanking; these bayonets weren't driven home in Bilbao; nor was it Stalin's enemies or Hitler's Jews who fell gashed, bleeding, mutilated.

This atrocity was smaller, briefer, more obscure — but for its victims no less terrible. And for Americans, of all that era's mass killings this one fell closest to home: 700 miles from Miami, within 200 miles of Puerto Rico, on a tragic island, Hispaniola, where U.S. troops had occupied and ruled less than a decade before. There, under the swaying palms and azure skies of Caribbean reverie, part-black Dominicans and full-black Haitians briefly danced a deadly dance, a fatal *merengue*. When it ended, many thousands of Haitians on Dominican soil had died horrendously. Then our government intervened — with words. Bribes passed hands in Port au Prince; and a nightmare faded, dreamlike, into history, evanesced from memories of almost all but Haitian and Dominican.

Were this a single grotesque incident, an isolated tropic horror, a backdrop for a Graham Greene novel, the sanguinary affair that has come to be called — misleadingly enough — the "Dominican Vespers" might merit its present general oblivion. But, in fact, this slaughter was a characteristic, if extreme, expression of the Dominican Republic's immigration policy — past and present — toward Haiti; thereby it betokens quite the opposite of recent Dominican policy vis a vis the U.S., to which the D.R. encourages, indeed depends on, an unrestricted immigration.

Dominican Republic Immigration: Now America's Problem

Few leading source-nations of current migration to the U.S. have so low a profile in American consciousness as does the Dominican Republic. The immigration of Dominicans has been a fairly recent one; they have tended to cluster in just a few metropolitan areas, above all New York City, already home to large Spanish-speaking Caribbean populations. In recent years, in comparison to, for instance, its close neighbors in the Caribbean — Haiti, Cuba, Puerto Rico — the affairs and culture of the Dominican Republic have attracted little more than specialized attention in the U.S.

The hard realities of Dominican immigration to the U.S., however, leave ignorance no longer an option. Since the 1980s, the Dominican Republic has become, in absolute terms, the leading source of legal immigration to New York City.[1] In the previous decade it provided more Spanish-speaking immigrants to the U.S. than any place but Mexico.[2]

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According to the INS, in 1993 the Dominican Republic, with a population of a little under eight million, ranked sixth as a source of legal immigrants to America.[3] There may now be as many as a million Dominicans — legally and illegally — in the New York area alone.[4]

The legal immigration has been accompanied by a vast illegal one, including many thousands who come clandestinely by boat to Puerto Rico. This latter traffic, far from being limited to Dominicans, has attracted "customers" from around the world. In 1995, an interagency report on the smuggling of illegal aliens to the U.S. — prepared for President Clinton by the Departments of State and Justice, the INS, the FBI, the CIA and the Coast Guard — identified the Dominican Republic "as the key problem country in the Caribbean region."[5]

"...an interagency report on the smuggling of illegal aliens to the U.S. ... identified the Dominican Republic as 'the key problem country in the Caribbean region.'"

On reaching America, Dominican immigrants and their families have benefited disproportionately from welfare.[6] Their involvement in serious crime — above all in areas connected with drug trafficking — is well known to police: predominantly Dominican precincts in NYC have long been among the leaders in robbery and murder.[7]

This essay approaches one of America's problematic immigrations by going to its source. That is: unlike the preferred approach from sociology, and in defiance of the common focus on America's doorstep and foyer as the origin of immigrant woes — ours and theirs — it attempts to place immigration from the Dominican Republic in the fabric of the D.R.'s own migration strategy and practice, past and present. In other words, in this essay "multi-culturalism" is fiercely embraced, more so perhaps than advocates of the "gorgeous mosaic" will like, in an earnest effort to see if part, at least, of Uncle Sam's immigration problems of the present have roots that reach back long ago and deep.

Hispaniola's Tortured Past

The past of the once-verdant island of Hispaniola, home to both Haiti and the Dominican Republic, reminds us that immigration, dispassionately defined, is not unfailingly benign, either for the "immigrants" or the host population. Three hundred and fifty dark and bloody years of recorded history preceded the "Dominican Vespers."[8] The Spanish invaders brought to the native population slavery, disease, and extinction. Prey to Spanish neglect and the depredations of buccaneer and privateer, Hispaniola became something of a colonial and economic backwater until the rise of French power in Europe enabled France's acquisition of the western third of the island (by the Treaty of Ryswick, 1697). Then commenced in earnest the importation, under indescribable circumstances, of African slaves to work, in conditions scarcely less wretched than those on the slave ships, the sugar plantations that soon made French Saint Domingue the world's most profitable colony.

While the French masters of Saint Domingue prospered from the sugar crop, the Spanish part of Hispaniola gradually subsided into a sleepy colonial backwater. But French luxury and Spanish somnolence ended abruptly and forever in the 1790s. The slave rebellion against the French that began with the onset of France's own revolution wore on in a savage war of extermination and attrition, with treacheries and atrocities on all sides, swallowing whole armies from France and Spain, until at last it ended in independence for Haiti, but occupation (in 1822) for the Dominicans — by Haiti.

Haitian rule over Santo Domingo, as it was known in the nineteenth century, lasted for over twenty years. Though the Haitian occupiers freed Santo Domingo's slaves, their rule was arbitrary and brutal, and drove the bulk of the country's Creoles (i.e., native-born whites) into exile.

From its liberation, in 1844, when the Spanish-speaking, heavily mixed-blooded Dominicans drove out the French-speaking, more purely African Haitians — at that time several times more populous, and quite more prosperous than the Dominicans — to the present day, the Dominican Republic has sought not only to defend, but to distance, itself from its neighbor.

Fear of outright Haitian reconquest dominated

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Dominican political considerations for several decades afterward. During the American Civil War the Spaniards were invited back in, ruling from 1861 to 1865; later, during the Grant administration, a treaty providing for Santo Domingo's annexation to the United States failed by a single vote in the U.S. Senate (1870).[9]

Following the 1860s, the Haitian military threat receded, but aversion to the Haitians lived on in learned tract and peasant lore. While Dominican "Antihaitianismo," as the phenomenon is classified in the *Enciclopedia Dominicana*, is not entirely based on race (in that largely mulatto country), a good bit of it is. Thus the *Enciclopedia:* "Extreme paradox it is to base the spiritual essence of a nation fundamentally composed of Negroes and mulattoes on an ideology that is clearly racist!"[10]

The Haitian menace — both military and "racial" — provided the chief impetus for the population policy the Dominican Republic practiced from its initial independence into at least the 1960s. In a nutshell, that policy was to encourage population growth by discouraging emigration and by fostering immigration — chiefly (and often exclusively) white immigration. This way, the largely white (even more pronouncedly in their own self-images) leaders of the little republic hoped to reduce Haiti's still heavy numerical advantage, and further to counteract it with "superior" European blood.[11]

While the Dominican Republic has opened its doors to white immigration of many types — including, under the despotic Rafael Trujillo, Jewish refugees from Nazi Germany and Loyalists fleeing Franco's Spain — white immigration to the little Caribbean republic has never amounted to much more than trickles. One such freshet, however, that of white sugar planters from Cuba fleeing the island after the failed revolution of 1868, helped Santo Domingo develop its own sugar industry, which soon eclipsed that of its Haitian neighbors. From the start the planters found themselves reliant on immigrant labor for the cutting and weighing of the crop — jobs the poorest Dominicans wouldn't touch, at least for what the sugar planters paid.

There were two sources for this foreign labor: Haiti, and Great Britain's possessions in the West Indies. That all these workers were black, and that few of them returned to their homes after the harvest, led the Dominican Republic to enact restrictive legislation in 1912. The law limited all but seasonal immigration to non-whites, and that only when there was a shortage of indigenous labor. Even then a special presidential permission was required. In the meantime, the island republic continued to seek unrestricted white immigration.

This law was not in force very long, however. The continuing incompetence of the Dominican Republic's leaders and the instability of its institutions, together with its mounting foreign debt and Yankee fears of European intervention, gave the U.S. cause (or pretext) for occupation and military rule from 1916 to 1924. (A parallel American intervention resulted in the U.S. Army's occupation of Haiti between 1915 and 1934.)

"The Haitian menace — both military and 'racial' — provided the chief impetus for the population policy the Dominican Republic practiced from its initial independence into at least the 1960s."

The occupiers, interested in a ready supply of cheap and willing labor (for Dominicans continued to disdain the bottom rung jobs at the sugar plantations), one that didn't have to be re-transported across the water, quickly overturned the 1912 restriction law. By 1919, braceros (seasonal agricultural laborers) were coming in freely from Haiti; even after the U.S. Navy and Marines departed, the Haitians continued to come.

Organizer of the Vespers

The American withdrawal set the stage for the rise of Rafael Leonidas Trujillo — and thus the "Dominican Vespers."[12] Trujillo, from a poor family of mixed black and white racial origins — reputedly including Haitian blood — was trained as an officer in the U.S.-organized military force, the National Guard, which by 1927 he commanded. In 1930 he led a successful coup against the president, then rigged his own election a few weeks later. Few would

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have predicted that this was the beginning of a 31-year autocracy.

Of interest here is Trujillo's Haitian policy, rather than the details of his hard rule over his own country. Yet one discerns similar threads in both areas: Trujillo's brutality, his nationalism, his ruthless energy in crushing his enemies and increasing his personal fortunes, his facility for enlisting capable lieutenants and for linking his personal ambitions to national goals and, often, to popular enthusiasm.

As Trujillo cemented his personal rule over the D.R., Haiti, in the aftermath of the U.S. Army withdrawal, bore sickly comparison even to its anemic neighbor. Whatever the gains in dignity and freedom for its people following liberation from the white man's ownership and rule, Haiti had gone in those years from an economic powerhouse to the poorhouse of the Caribbean. Its political history was a line of willful rule by tyrants, broken only by assassination or coup; its peasant populace, freed from the forced cultivation of the sugar, sunk in poverty and voodoo; the land itself bare and eroded as the people wrung a desperate existence ever further up the hillsides. Increasingly, its leaders were neither able, nor concerned, to defend its nationals abroad.[13]

Thus there were Haitians resident in the Dominican Republic, not merely those about the sugar plantations in the south and east, but first and foremost a sizable and largely unregulated population in areas along the ill-defined border, particularly in the northwest. Many of these were descended from families that had moved in during the unrest of the Haitian-Dominican independence war of the previous century.

In 1929, shortly before Trujillo came to power, the Dominican Republic and Haiti signed an agreement attempting to define and regulate their mountainous common border. As far as the Dominicans were concerned, this accomplished little — as did a Dominican law, enacted in 1934 under Trujillo, to encourage settlement of the frontier by farmers of white blood. A large and unassimilated Haitian population remained in close proximity to the border and virtually removed from Dominican sovereignty. Haitian currency circulated freely, Haitian Creole was the language, and voodoo the popular religion.[14]

'Ethnic Cleansing' in the Caribbean

Numerous questions remain about the "Dominican Vespers." Documentation is thin and largely second hand. The number of the victims and the motives of their killers are still not entirely clear.[15]

"Numerous questions remain about the 'Dominican Vespers'. Documentation is thin and largely second hand. The number of victims and the motives of their killers are still not entirely clear."

The essentials, however, seem fairly well established. Several weeks before the "Vespers," Trujillo toured the northwest border for the first time in his life. The massacre — whether it started at the end of September or on October 4th — came at his order. Dominican military and paramilitary forces carried it out disguised as campesinos and armed with machetes to simulate a popular uprising aimed at driving out Haitian "cattle rustlers." (The name "Dominican Vespers," with its allusion to the Sicilian national rising against their French rulers in 1282, seems clearly of Trujillist provenance.)

Nothing like an exact figure for the dead, let alone the maimed survivors, has emerged, although Bernardo Vega, the chief D.R. expert on the "Dominican Vespers," puts the number at around 12,000.

It is not clear exactly what mixture of motives led Trujillo to act: a concern for his country's sovereignty; his evident shame about his own Haitian blood; the exacerbating factor of the recent Haitian immigration, particularly in light of the international economic depression; the evidently not negligible problems of Haitian crime, above all rustling and smuggling across the frontier; the precedent set just months before, when Cuba's dictator Batista had expelled an estimated 35,000 Haitian braceros to lessen unemployment (and, reputedly, Negro blood) in Cuba.

Vega argues that Trujillo's chief motive was to

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carry forward his policy of "whitening" the Dominican Republic. There is certainly warrant for this opinion, for the mixed-blood caudillo had commissioned an elaborate genealogical investigation to establish that he was of pure, indeed noble, European stock. Important elements of the population were undisguised in their contempt for the largely pure-blooded Haitian blacks. But there is more to the story.

"Trujillo's actions in succeeding years reinforce suspicions about the merely racial motivation for the massacre."

The "perejil" challenge, for instance. This Spanish word for parsley is especially difficult for Haitians to pronounce, and thus it has functioned to the present day as a "shibboleth" — in the style of the Old Testament — to distinguish black Haitians and black Dominicans. If race alone was the criterion, why have a linguistic test — one that assimilated Haitians could likely pass?

Noteworthy as well is that Haitians were spared who were in the country — under agreements that worked in good measure to Rafael Trujillo's private profit — to work on the sugar plantations.

Trujillo's actions in succeeding years reinforce suspicions about the merely racial motivation for the massacre. In 1941 the dictator undertook a program of "deafricanization" of the frontier by measures which included the settlement of Dominican farmers, moves to root out the speaking of Haitian Creole, and the dispatch of Jesuit missionaries to combat the voodooism entrenched in the northeast. In its own, rough, and (in 1934) horrific way, it might be argued, Dominican policy under Trujillo sought to assimilate some Haitians, kill or drive out others, exploit the rest for labor — part melting pot, part holocaust, part modern semi-slavery.

The "Vespers" sparked brief outrage in the United States, which had not lost its special interest in Dominican affairs. Congressman Hamilton Fish called the massacre the worst outrage in the history of North America; the U.S. pressed the Organization of American States to mediate. Soon enough, a settlement of $750,000 was arranged, which Trujillo, beset by international outcry, agreed to pay, while professing no special remorse. (In the end the Dominicans paid their reparation at a fraction of the agreed figure by bribing Haitian officials, who wound up pocketing most of the money.)

Before long, Dominican-American relations were back to normal. As American concern turned toward extra-hemispheric threats to U.S. interests in the Caribbean, FDR remarked famously of Trujillo, "He's a son-of-a-bitch... but he's our son-of-a-bitch!" and had him and his family as guests at the White House a few years later. As for Fish, the voice of censure, he was soon enough reported to be on retainer from Trujillo to represent the interests of the dictator in Washington.[16]

Sugar-coated Contempt

Although there hasn't been another Dominican Vespers in the six decades that have followed, this in no way means the Dominicans have ceased their vigilance or dropped their contempt for their Hispaniola neighbor.

Relations between the Dominican Republic and Haiti continued to be, for the most part, formally correct, but less than cordial, during the remainder of Trujillo's rule. The dictator made three further "bracero" agreements with his opposite numbers in Port-au-Prince, providing sorely needed cash for the Haitian rulers, and dirt-cheap labor for the sugar plantations, a good percentage of which Trujillo came to own or control.

Trujillo's brutality at last made him more of a liability than an asset in Washington's eyes, and the author of the Dominican Vespers was assassinated, with help from the CIA, in 1961. While Dominican politics have changed from the rule of one to a spirited competition between more or less democratic parties, the Dominican Republic's relationship with Haiti has continued largely unchanged.

One symbol of this continuity has been the enduring leadership of Joaquin Balaguer, one of Trujillo's right hand men, who headed the Dominican Republic's conservative party and presided over the country, off and on, well into the 1990s. Balaguer profited from the U.S.-led intervention in 1965 more than any other politician, perhaps, winning two consecutive upset presidential

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elections and remaining a force in the D.R. to the present day. Balaguer has been and remains a prominent ideologist of anti-Haitianism, authoring the profoundly pessimistic and racialist study of his country's relationship with Haiti, *La Isla al Revés* (*The Topsy-Turvy Island*), which he had reissued in 1985.

Whether under conservatives like Balaguer or social democratic leaders, the importation of seasonal Haitian sugar workers has continued, in conditions which have drawn the interest of the Anti-slavery Society in London and other human rights groups. According to them, it is common practice to dragoon into the sugar compounds any and all Haitians needed for harvest who happen to find themselves in the D.R. Meanwhile, recruiters venture into Haiti with offers of wondrous wages, and fine conditions; they seem to find unending takers, despite the Haitian leadership's expressed opposition to the traffic (in recent years, the rights groups have taxed the Duvalierists and their successors with taking surreptitious "compensation" for complying — under Trujillo, payment to the Haitian rulers was undisguised). One scarcely need add that the continuing seasonal import of laborers housed in fetid barracks for the meanest type of work did nothing to sway Dominicans from their anti-Haitian views; at best "anti-Haitianism" was stabilized by the swift, low-profile entries and exits (usually on buses under armed military guard) and comparable invisibility in the squalid sugar compounds.[17]

A Two-faced Immigration Policy

The end of the Trujillo era was followed by a brief period of comparative prosperity, largely financed by U.S. aid. By the early 1980s, however, the Dominican economy, lashed by actual and figurative tempests (from the oil embargo to tropical storms to the collapse of the world sugar market) and proving incapable of resuscitation from within, had to a large extent unraveled. Immigration, chiefly to the United States, which had been actively discouraged under Trujillo, blossomed following the post-1965 U.S. reform, then swelled to a flood tide.

At the present time, the Dominican Republic is heavily dependent on remittances from its immigrants in the U.S. who provide an estimated one-third of its foreign exchange revenue. Meanwhile, since the 1960s, and despite the opposition of the church, the small republic — for some time now more populous than Haiti — has encouraged family planning to limit population growth, with some success. The earlier drive to attract white immigrants has been forgotten; instead, the Dominican Republic strives to build a tourist industry to rival those of its Caribbean competitors. Tensions with Haiti persist, of course; the leftist governments of Aristide and his successor, Preval, condemn the exploitation of the sugar workers, and commemorate the Vespers — while the Dominicans closely monitor the border and hound illegal Haitians within.[18]

Perhaps the varied stance of most Dominicans on two sorts of migration — their own to America, and Haitians to the Dominican — is best reflected in events surrounding last year's presidential election. The winner, Leonel Fernandez, was the holder of a U.S. green card. Although the candidate of a different, and arguably left-liberal party, Fernandez had conservative Joaquin Balaguer's support. And why did Balaguer not endorse his own party's candidate? Reportedly because Leonel Fernandez's other opponent, Jose Francisco Pena Gomez — a black with Haitian antecedents — would otherwise have likely won. It is also reported that Fernandez supporters brandished toy monkeys and apes at political rallies. (During the previous 1994 presidential election, Balaguer ran head to head against Pena Gomez, winning the election — not without a little fraud — after putting it around that his opponent planned to merge the D.R. with Haiti.)[19]

After the election, in which 50,000 Dominicans

"[Ruth] Messinger, borough president of Manhattan, where Dominican criminals have been rampant ... has already been campaigning in the D.R. ... No telling if the hand she shakes there may cast a vote in New York this fall."

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living in New York City voted (money from Dominicans in the U.S. amounted to one third of all campaign funds), President Fernandez, who lived in the city for years, was quick to disavow an agreement he allegedly made with New York police officials. It seems that, thanks to provisions in Dominican law against extraditing citizens to places where, as in New York, the death penalty may be imposed, fugitives from capital crimes in New York, chiefly murderers and narcotrafficantes, have taken to returning home — where, as politicians look the other way thanks to the powerful influence of drug kings from South America, they live unmolested and well.

To adulation in the Dominican Republic, Leonel Fernandez defied New York's mayor, Rudolf Giuliani, and Police Commissioner Howard Safir. He would tolerate no New York policemen on Dominican soil. And, lest he have worried about roars of protests from Americans concerned about their country's sovereignty and safety, Fernandez won the quick support of several Democratic candidates for mayor of New York — among them Ruth Messinger, borough president of Manhattan, where the Dominican criminals have been most rampant. Messinger has already been campaigning in the Dominican Republic — no telling if the hand she shakes there may cast a vote in New York this fall.[20]

Since the start of the year, Fernandez has tightened controls along the Haitian border. An estimated 20,000 illegal Haitian immigrants have been repatriated.[21]

It would be facile to condemn the Dominican Republic, its leaders and its people. Nor is it our part to sneer at their "racism"; we have quite enough to attend to of our own. It might be argued, perhaps even with surprising facility, that for the most part the leaders of the Dominican Republic, over many years, have worked to advance the interests of their country and its people in conformity with such options as have been available. Insofar as immigration is the issue, can our leaders say the same? More important, can ordinary Americans — who are already supporting the massive immigration from the D.R. and whose children will be elbowed aside by those of the immigrants, if present policy remains unchanged — say the same of *their* leaders?

For the ancient Romans, two-faced Janus was a god of time and place: of the threshold, of the doorway (from whence our "janitor"), and of the year's end and opening (from whence our "January"). If a deity of borders hovers over eastern Hispaniola, his one face grimaces toward Haiti, the other looking north in glad anticipation. As for Americans, many wear two masks themselves: a wistful smile remembers our immigration policy pre-1965; a grimace and a shudder anticipates what, if unreformed, the present policy portends. TSC

NOTES

[1] *New York Times*, 12 January 1997, "Immigrant Influence Surges in New York City in the 90's," A1, B6. From 1990 to 1994, according to the New York City Department of Planning, one in every five legal migrants to New York City came from the D.R.

[2] Ruben G. Rumbaut, "The Americans: Latin American and Caribbean People in the United States," in *Americas: New Interpretative Essays*, Oxford, England: Oxford U. Press, 1992.

[3] The INS figures are for the fiscal year. Each of the five countries that exceeded the D.R. as a source of illegal immigrants has a population more than eight times larger than the Caribbean nation. Immigration and Naturalization Service, U.S. Department of Justice, cited in *The World Almanac and Book of Facts, 1995*, Mahwah, NJ: Funk and Wagnalls, 1995, p.386.

[4] While there are no exact figures for illegal immigration or current population, at least half a million Dominicans have emigrated to the city since 1980. Counting illegals, earlier arrivals and their children, an estimate of a million Dominicans and first-generation Dominican-Americans in the New York area may be conservative. See note 1 above and *New York Times*, 16 September 1991, "Between Two Worlds: Dominicans in New York."

[5] Reported in *The Record*, Hackensack, NJ, 28 September 1995. See also Christopher J. Farley's account, "Dangerous Tides" in *Time*, 10 April 1995, pp. 56-57. By 1995, to accommodate the international swarm of would-be migrants to America, the D.R. had become the biggest importer of outboard engines in Latin America.

[6] Peter Brimelow, *Alien Nation*, New York: Random House, 1995, p. 146. Brimelow cites statistics from the U.S. House of Representatives showing a welfare rate among D.R. immigrants twice that of African-Americans.

[7] The heavily Dominican 34th Precinct in Washington Heights, Manhattan, led the city in homicides in 1992 (*New York Times*, 20 March 1997, "Police Blotter.") See also *New York Times*, 16 April 1996, "Life and Death in the Fateful Three-Four Precinct."

[8] For the history of Hispaniola from Columbus to

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Trujillo, the Dominican and Haitian chapters in Hubert Herring's *A History of Latin America*, New York: Alfred Knopf, 1972 (hereafter Herring); Howard J. Wiarda and Michael J. Kryzanek, *A Caribbean Crucible*, 2nd edition, Boulder, CO: Westview Press, 1992 (hereafter Wiarda and Kryzanek); and *The Cambridge History of Latin America*, Cambridge, England: Cambridge University Press, 1990 (hereafter CHLA by individual volume and chapter).

[9] For U.S. relations with Haiti and the D.R. from 1789-1873, and to a lesser extent for Haitian-D.R. relations during much of that time, Charles C. Tansill, *The United States and Santa Domingo*, Gloucester, MA: Peter Smith, 1967.

[10] According to the American historian of Latin America, Hubert Herring, writing 25 years ago: "The 3.8 million Dominicans are predominantly a mulatto people, with ambitions to be reckoned white." Herring, p.443. See under "Antihaitianismo," *Enciclopedia Dominicana*, 3rd edition, Santo Domingo, D.R.: *Enciclopedia Dominicana S.A.*, 1988.

[11] Bernardo Vega, *Trujillo y Haiti* (Vol.1), Santa Domingo, DR: Fundacion Cultural Dominicana, 1988 (hereafter Vega). P.25; Wiarda and Kryzanek, p.123.

[12] For Trujillo's rise, rule and end, *CHLA* (vol.7), Frank Moya Pons, "The Dominican Republic Since 1930" (hereafter *CHLA* [vol.7] Moya Pons); Vega; and Bernard Diederich, *Trujillo: The Death of the Goat*, Boston: Little, Brown & Co., 1978.

[13] For Haiti, in addition to works cited above, *CHLA* (vol.5), David Nicholls, "Haiti, c. 1870-1930" and *CHLA* (vol.7), "Haiti Since 1930."

[14] *CHLA* (vol.7), Moya Pons. P.517.

[15] For the massacre, Vega; Miguel Garcia, *La Matanza de los Haitianos: Genocide de Trujillo, 1937*, Santo Domingo, DR: Editor Alfa y Omega, 1983.

[16] G. Pope Atkins and Larmen G. Wilson, *The United States and the Trujillo Regime*, New Brunswick, NJ: Rutgers University Press, 1972, pp.54ff.

[17] For Post-Trujillo Dominican politics, Moya Pons and Jan Knippers Black, "Democracy and Disillusionment in the Dominican Republic," in *Modern Caribbean Politics*, Anthony Payne and Paul Sutton, editors, Baltimore: Johns Hopkins University Press, 1993 (hereafter Black). For Haitian sugar workers in the D.R., *Haitian Sugar Cane Cutters in the Dominican Republic*, New York: America's Watch: National Coalition for Haitian Refugees, November 1989; and *CHLA* (vol.7), Nicholls, "Haiti Since 1930," pp.567ff.

[18] For the D.R. economic collapse and its consequences, see Black and Wiarda and Kryzanek, (pp.5-6), and for recent D.R.-Haiti relations, Moya Pons and *CHLA* (vol.7), Nicholls.

[19] Details of the 1996 Dominican presidential election are taken from Vita Echevarria, "Racism, Foreign Money Dominate 'Clean' Dominican Elections," *Hispanic*, September 1996.

[20] For the NYPD plan, and the reaction in the D.R. and among immigrant-friendly New York politicians, *New York Times*, 6 December 1996, "Safir Defends Plan for Outpost to Pursue Dominican Fugitives"; *New York Post*, "Kids' Killers Top List of Dominican Fugitives," 5 December 1996; and *El Diario*, 4 December 1996, "Cardenal dominicano fustiga propuesta de Safir."

[21] *El Diario*, (New York City), 12 March 1997, "Culpan a exiliados haitianos por malas relaciones entre gobiernos."

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Immigration Reform in France As Street Theater

High drama, artful staging, surprise endings

by Gerda Bikales

The year 1997 marks the fiftieth anniversary of the start of the Marshall Plan, probably the most successful American diplomatic initiative in history. In a move to counter the inroads of communism, the plan made American financial aid, expertise and moral encouragement available to the war-ravaged nations of Europe, stimulating the rapid recovery of their shattered economies and idled industries.

Its success also laid the foundation for Europe's unending immigration dilemmas, which are still making headlines today.

The Post-War Labor Shortage

At the end of Word War II, France faced the monumental task of reconstruction with a severe manpower deficit. In addition to the lives it had lost in the recently ended war, the country still suffered from the consequences of losing a million young men a generation earlier, in the trenches of World War I. As the post-war economy took off, France invited workers from overpopulated countries like Turkey and from its North African colonies (soon to be ex-colonies) to come to work in France. The idea was to recruit laborers for temporary work, but what they got were human beings with attachments to families and with problems adjusting to the new host society.

From Shortage to Surplus: 1974

In the early seventies, the first hints that the dynamic economy might be running into serious trouble came from rapidly rising oil prices, culminating in 1974 in an oil embargo by petroleum producing countries that threatened to bring the industrialized world to a standstill. Job creation slowed, and France, awakening to a host of social problems created by its immigration policies, decided it would no longer bring in workers to supplement its own labor force.

Yet, despite all the ballyhoo of the new policy of Immigration Zero, immigration continued to grow and to impact the public's consciousness. Though no additional workers were specifically recruited, immigration was fueled by family reunification, large numbers of refugees from Indochina, asylum seekers from Eastern Europe, and a steady stream of illegal immigrants.

In 1981, François Mitterand, a Socialist, became President of the Republic. He had campaigned on a platform of more employment and a new approach to immigration. His government opted to maintain the restrictions in place but to regularize those clandestine immigrants showing proof of employment and residence in the country since January 1, 1981. Some 132,000 people took advantage of the offer. In 1991, with little fanfare, another regularization was granted to 14,000 asylum seekers, whose request for permanent resettlement had been refused after years of legal wrangling. Faced with considerable public uneasiness about immigration, and the rise of a new political party — the National Front — capitalizing on that sentiment, the rhetoric of the Mitterand years turned to expanding efforts to integrate immigrants into the mainstream of French society, while resisting illegal entries. "France can't take in all the world's misery," the Socialist Prime Minister Michel Rocard announced — a phrase oft-quoted with relish by immigration reformers on the Right.

The problems of structural unemployment unfolding in the industrialized nations hit France especially hard. In the Mitterand years the

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government had nationalized many industries but had done nothing to make them more competitive in the global marketplace. A shrinking labor market failed to make room for young people. The National Front continued to denounce immigrants, and gained support from the jobless and insecure.

The Pasqua Laws, 1993

In the final years of his fourteen-year presidency, Mitterand, ill and politically weakened by the election of a Gaullist legislature, presided over the passage of tough new laws to stem the flow of illegal immigrants.

These measures, named for Minister of the Interior Charles Pasqua, firmed-up existing laws on the grant of residency permits, asylum requests, deportations and expulsions, and on some technical points. A major innovation required petitioners wanting to reunite with their families to secure certification from City Hall attesting to the adequacy and sanitation of the families' proposed living quarters. Importantly, the Pasqua law clarified a legal ambiguity that had permitted the implantation of polygamy in France. Henceforth, polygamists could no longer bring in more than one wife and her children. Those who violated this provision would themselves lose their right to legal residence in France.

Another set of changes revoked the right to automatic French citizenship by virtue of birth on French soil. To become citizens, children born in France without at least one citizen parent would have to affirmatively declare themselves French, some time between the ages of 16 and 21.

These laws were enacted despite the vociferous opposition of human rights and immigrant-support groups. In a rarely used procedure, the determined legislature overruled an unfavorable opinion by the Council of State, an important constitutional watchdog.

The Sauvaigo Report

Immigration surfaced again as an issue during the 1995 presidential campaign, won by the Gaullist Jacques Chirac. Under pressure from mayors of several cities with large immigrant populations, the new government appointed a legislative Commission to study current problems and make recommendations on further changes needed to win the battle against clandestine immigration. The mayors contributed their insights into the creation of clandestine communities, acquired through their mandated involvement in a program known as the "certification of domiciliation."

It should be noted that France doesn't require visas of short-term visitors from countries which don't produce large numbers of illegal overstays. Visitors from countries that do need an invitation from a French host must obtain a "certificate of domiciliation" from his City Hall confirming his capacity to offer decent hospitality to a guest. Most mayors' offices have routinely given approval, but

"A major weakness in the [certificate of domiciliation] program was that though it was known when the guest was expected in France, no one had any idea of when — or if — he left."

others have attempted to make certification a meaningful instrument for filtering out people very likely to remain in the country indefinitely. Some hosts, it was known, were conduits for illegal immigrants, inviting guest after guest. A major weakness in the program was that though it was known when the guest was expected in France, no one had any idea of when — or if — he left.

The Commission issued its report, drafted by National Assembly deputy Suzanne Sauvaigo, in April 1996, less than a year after Chirac took office. Its recommendations were tough, designed to make the implantation into clandestinity more difficult at every stage. Visitors would have to purchase health insurance and be finger-printed; a data-base of hosts would be established; medical care for illegal residents would be limited to emergencies and the treatment of contagious illnesses; employers of illegal residents would be severely punished — they would have to bear the costs of their employees' repatriation, and face the loss of French citizenship if naturalized or of their legal residence permit if foreign; French employers could lose voting rights for a time. The 10-day limit on holding illegal aliens under investigation would be extended, allowing

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more time to build a dossier that would hold up in a court system inclined to detect human rights violations at every turn.

The Sauvaigo report created an immediate uproar. The Left, a small minority in the Assembly, accused the center-Right ruling coalition of doing the National Front's bidding. The Right held that laxity on immigration benefited the National Front — only a firm government stand could disarm it.

"To add pressure on the government, ten African men started a hunger strike in the church on July 4."

Open splits developed in the ranks of the majority, some (including Charles Pasqua) claiming that better enforcement of the Pasqua laws would be enough.

It had been expected that the report would guide the drafting of a new law, to be proposed by the feisty new Minister of the Interior, Jean-Michel Debré, before the legislature's summer break. But the furor unleashed by political opponents and a host of human rights and pro-immigration organizations made Alain Juppé, the Prime Minister, cautious. He pulled back. "There is no need to pass legislation immediately, while things are so hot" he announced.

It sounded like the end of that chapter. Perhaps the government would have to make do with the Pasqua laws, after all.

Drama in Prime Time

This is probably what would have happened, were it not for some parallel developments that brought the issue of illegal immigration to a head, in a wrenching human drama and accompanying staged dramatics that all France could follow day-by-day on the evening news.

In the spring of 1996, while the government was planning a more hard-line approach to illegal immigration, the immigrants and their supporters were not idle. In March, some four hundred and thirty African men, women and children took over the St. Amboise church in Paris, to make known their "right" to legal residence permits, and announced their intention to remain in the church until their requests were granted. The occupants were mostly parents of French-born non-citizen children, who found themselves in a legal bind created by the 1993 laws, whereby they were neither deportable nor entitled to residency permits. Some were spouses and children from outlawed polygamous unions. Others were applicants for political asylum who had exhausted all appeals. The plan to have this large group of Muslim and Animist immigrants claim refuge in a Catholic church misfired when the priest in charge called the police to expel them, on the ground that the crowding was a safety hazard. Jean-Marie Lustiger, the Cardinal of Paris, justified this action and was taken to task by immigrant defense groups and by the French Protestant church. They had expected more support from the prelate.

Next, the group found shelter in a theater complex, then in an abandoned railroad warehouse. In late June, some three hundred people occupied another church, St. Bernard, where the priest was known to be more sympathetic. Throughout the occupation, the "St. Bernard collective" was supplied with food, baby formula, bedding and spokesmen by a host of organizations spouting pious human rights oratory and reiterating the occupants' "right" to residency permits. Despite criticism from international organizations such as Amnesty International and the European Federation for Human Rights, the government, in the person of Interior Minister Debré, stood firm in its refusal to deal with the occupants as a group, promising nothing more than a case-by-case review that might bring relief to some.

Seeking a formula to end the impasse, a group of 26 well-known supporters constituted itself a "College of Mediators" and offered ten criteria for resolving the problem of France's illegal residents. These ranged from a more generous interpretation of asylum laws to restoring automatic French citizenship to all born on French soil; essentially, their solution was to find some interpretation of United Nations and European Union Conventions that would justify the regularization of most of the country's currently illegal population.

To add pressure on the government, ten African men started a hunger strike in the church on July 4.

Throughout the spring and summer of 1996,

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apprehended illegal immigrants continued to be deported in chartered airplanes, back to their African homelands. The previous government had rarely resorted to deportation, but Debré was convinced that high-profile expulsions were very effective disincentives to those contemplating illegal resettlement in France. More than 14,000 people had already been deported in the previous twelve months. Now, the much-publicized departures were intended to symbolize government resolve unmoved by the growing agitation.

As the days went by and the hunger strike continued, tensions escalated. After the first month of the strike, crowds started to gather on the street in front of St. Bernard, waving slogans of support and denunciations of the government. Two articulate spokespersons for the "collective" of the *sans papiers* ("paperless") became television celebrities, stating and restating their conditions for ending the strike, daring the government to persist unto the death of these desperate people. Doctors looking after the strikers (and after the babies — eight more were born in the two-and-a-half months of St. Bernard's occupation) gave daily reports of their weakening condition. Emmanuelle Béart, the major French film star of the younger generation, took up residence at the church, appearing before the cameras disheveled and without make-up, holding a baby in her arms. Well-known artists and intellectuals from many fields appeared on cue in an orchestrated show of support, attracting more crowds in their wake.

Public sentiment reflected a growing concern about the fate of the strikers. The Left seized the moment, organizing demonstrations in Paris and in the larger cities. Red flags, not often seen since the fall of communism, reappeared confidently at protest marches. An inchoate expectation hung over the country. Would a seemingly indifferent government come up with more generous offers? Would the strikers be allowed to starve? Would the police storm the church and force-feed the strikers? Something had to happen.

It did. On the 39th day of the strike, 300 police officers accompanied by doctors entered the church and removed the strikers by ambulance to several hospitals. They expected the patients to be hospitalized for several days and made no immediate plans for their post-hospital detention, but all were found to be in surprisingly good health and not in need of medical intervention. Within hours, the patients checked themselves out and regained the church on their own to continue the hunger strike. France, in the midst of its languid August vacation ritual, held its breath as the danger of starvation became more imminent.

On the 52nd day of the fast, the police stormed St. Bernard's and evacuated the 300 Africans and their supporters. A human drama that had been allowed to go on too long and too far was over, at last.

Despite all the time the government had had to prepare itself for this moment, what followed bespeaks of indecision and confusion. Four days after the raid, four of the aliens were put on charters and returned to Mali, eight received short prison terms, seven were put in administrative detention, sixty-four were placed under deportation order, forty-nine were granted short-term residency permits — a number that was expected to go much higher. More than 140 individuals of the St. Bernard collective were left in legal limbo when the court simply released them on technicalities. They and their supporters capitalized on their national celebrity, continuing to press their demands as the "St. Bernard collective of the paperless." Some went into hiding but emerged periodically to try another church seizure or denounce the departure of another chartered flight filled with deportable aliens.

"On the 52nd day of the fast, the police stormed St. Bernard's and evacuated the 300 Africans and their supporters. A human drama that had been allowed to go on too long and too far was over, at last."

Approaching the Debré Laws

The dramatic events at St. Bernard urgently revived the immigration issue, after it had been all but dismissed by the Prime Minister. The Pasqua laws had been shown to be internally inconsistent.

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The new militancy of the immigration rights lobby had demonstrated an urgent need for better controls. The Interior Ministry was ordered back to work on a new legislative draft.

By October, the draft was ready for internal review and its outline became known. It was to be a softer version of the previous spring's Sauvaigo report. It would allow police searches of certain categories of vehicles within 20 kilometers of land borders, as border controls within Europe had virtually disappeared and the unguarded frontiers had become gateways for illegal entries. It would establish a data-base of fingerprints of visitors from countries with a record of overstays, and of apprehended illegal residents. The new law would give temporary legal residence permits to various categories of people caught in the contradiction of being neither deportable nor eligible for legal settlement.

"The importance of the election was greatly overblown — one might have thought that the National Front was about to take over the whole country in a coup d'état."

But it was the proposal in "Article I" that drew all the attention. The reformers wanted to retool the required "certificate of domiciliation" into a useful device for checking the departure of guests at the expiration of their visa. The host would be asked to mail a form to City Hall, reporting the guest's departure.

People felt uneasy about this breach in the traditional rules of hospitality — it doesn't feel right to snitch on a guest's movements to the authorities. This is a delicate issue in France, which has a disgraceful history in this area — under the German occupation, all too many too willingly cooperated with the authorities by reporting the comings and goings of neighbors and associates, resulting in the arrest and deportation of thousands of persecuted Jews and political dissidents. More than fifty years later, the shame of it still stings.

Nevertheless, in December 1996 the bill went through a first reading in the National Assembly uneventfully. The Left hardly raised its voice. It was badly torn on the immigration issue, its mainstream sector having supported restrictions in the Mitterand era. The hard Left had seemed to score with its open embrace of the "St. Bernard collective," but subsequent opinion polls confirmed solid support for immigration reform. The Socialists could not ignore the National Front's raids on its own constituency. Unable to agree on any alternative policy, the Left remained paralyzed As the year 1996 ended, there was no reason to doubt that the Debré proposals would soon become law.

Vitrolles, February 1997

The theatrics of immigration reform took another dramatic twist early in the new year. A mayoral election in the small and unimportant city of Vitrolles, near Marseilles, caused panic when the winner turned out to be Catherine Megret, wife of the National Front's second in command and the presumed successor to the party's aging leader, Jean-Marie LePen. Three other towns, including the city of Toulon, already had National Front mayors, but Madame Megret won with a clear majority, while the others had only gathered a plurality. It didn't help to calm people's worst fears when the newly elected mayor told a German reporter that she would like to see naturalized immigrants stripped of their French nationality and deported, and that French employers should be required to hire only French citizens, or pay higher taxes if they insist on hiring foreigners.

The importance of the election was greatly overblown — one might have thought that the National Front was about to take over the whole country in a coup d'état. Memories of an earlier time when French fascism had triumphed and brought disgrace upon the nation came back to haunt many. Now, it was felt, the time had come to take a stand against the National Front, and the immigration bill still awaiting passage was the perfect medium to carry this message.

The film world took the lead. A few days after Vitrolles, 59 actors, directors and producers well-known to the public signed a declaration that they would disobey Article I, and would not report the departure of their foreign guests. They took little risk in doing so, for no penalties were to be imposed

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on those who failed to return the departure form, other than a refusal to issue subsequent certificates of domiciliation to a delinquent host.

The cinema folks were followed by 155 writers of some reputation. From then on, the movement spread quickly. Eleven hundred journalists (many no doubt reporting on the developing immigration story) added their names. New lists of people deemed influential — theater professionals, university professors, psychiatrists, architects — joined the coordinated campaign to keep the names coming. A union of magistrates also signed on. "Immigrants with names difficult to pronounce," college and high school students, doctors and dentists, the lists of people calling for civil disobedience exploded. Several Internet home pages were launched to recruit more protesters.

While the legislation was under consideration by the Senate, the protesters took to the streets. In one impressively disciplined march, an estimated 100,000 people walked the Paris streets in total silence toward the East Railway Station, an empty suitcase in their hands. The symbolism was vivid — they retraced the route of the mass deportations during the Nazi occupation. It was perhaps too vivid; some who had actually been forced to walk that route leading to the concentration camps were scandalized by the inappropriate parallels the organizers implied, and made their objections known.

The media gave the impression that the government was under irresistible pressure, and would cave in at any moment. Yet the results of several opinion polls showed that the reforms had strong popular support. They offered a counterweight to the protests, and kept the majority politicians in the legislature in line. In March, the Debré laws were passed, with some adjustments. In a compromise, Article I was changed to require that hosts notify the "préfêt" rather than the mayor — a more remote figure in the life of the community, yet one closer to the central government. For reasons only the French can appreciate, this arrangement seemed less objectionable. Other changes accommodated minor criticism from the Council of State, which gave its blessing to the amended laws.

Incredibly, after a tumultuous year, major reforms to curtail illegal immigration in France had passed all the hurdles and had become law. It remained to be seen whether they would work.

"The media gave the impression that the government was under irresistible pressure, and would cave in at any moment. Yet the results of several opinion polls showed that the reforms had strong popular support."

Legislative Elections, May-June 1997

In April, President Jacques Chirac decided to dissolve the National Assembly and called for new elections a year before the current Assembly term expired. A set of complex calculations had convinced him that his chances of retaining his parliamentary majority were better at that time than a year later.

In the course of the short and intense campaign, the out-of-power Socialists, uneasily allied with the Communists, promised to create 700,000 publicly financed jobs, a 35 hour work week, and to move the retirement age to 55. They also promised to annul the Pasqua and Debré laws.

Chirac miscalculated. His party lost, badly, undone by the National Front's spoiler strategy of denying victory to the Right by tacitly throwing its support to the Left.

On election night, spokesmen for the "paperless" announced that a delegation was on its way to collect on the Socialist's promise of "papers." That promise was quickly restated by Leonel Jospin, the new Prime Minister. The delegation, which included some veterans of the "St. Bernard collective," was well received in the Prime Minister's office.

Legalization has been offered to an unknown number of clandestine residents, estimated to be at about 40,000, but possibly much higher.

New laws, steeped in the rhetoric of human dignity, generosity and compassion, are expected to be introduced this summer. The Debré and Pasqua laws await revocation. TSC

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'Indulgence in Ethnicity'

Leads Canada to divorce but would lead the U.S. to disaster

by Charles Krauthammer

A few years ago, *The New Republic* held a competition for the most boring headline in history. The winner of the contest — the benchmark for dull — was: "Worthwhile Canadian Initiative."

The key adjective was "Canadian": boring, bland, safe. I regret to report that this is no longer true. No country in the process of imploding has the right to be called boring. True, the excruciatingly slow and almost civilized way it is doing so is characteristically Canadian. But the reasons it is falling apart should be of great interest, especially to Americans.

[In late May], Canada held a national election. The results show a country in an advanced stage of fracture.

Canada used to have three major parties. They represented different ideologies: there was a party of the left (the New Democratic Party), the center (the Liberals) and the right (the Progressive Conservatives).

No longer. The NDP and the PC were effectively wiped out in the 1993 parliamentary elections and have made only feeble comebacks. What is left?

There are still three major parties. But they are regional and ethnic. The Liberal Party has survived and with a bare majority in the new Parliament remains the ruling party. But it did so by winning two-thirds of all its seats in one province, Ontario. (Canada has 10.) In Ontario, the Liberals won 101 of 103 seats.

Ontario is the geographic and economic center of Canada. To one side is Quebec; to the other, the West. In Quebec, the majority of seats in Parliament were won by a radically ethnic and separatist party, the Bloc Quebecois. Its platform is the separation of Quebec from Canada. It sends its delegation to the national parliament in Ottawa for the principal purpose of breaking up the country.

To the other side of Ontario are the Western (prairie) provinces stretching all the way to the Pacific. The Reform Party, the second largest party in the Parliament and now the official opposition, swept 70 percent of the seats in the West. It won not a single seat anywhere else in Canada.

The Reform Party does talk about lower taxes and less government, standard conservative fare. But its real attraction is that it is anti-Quebec. The establishment, it charges, has been trying to keep Canada together with too many concessions to Quebec. The soft Easterners would give Quebec the status of a "Distinct Society" within Canada and extraordinary control over its language, culture, immigration and other functions. Reform rejects special status. Its platform is equality for all the provinces — read: Get Quebec off its pedestal — and if Quebec doesn't like it, it can go jump in the Atlantic.

In May, the Liberals won. Ontario — bland, reasonable, accommodating — rules. For now. But the Reform Party will rail and Quebec will soon have another one of its independence referendums. The separatists have lost twice. But they lost the last one by less than one percent. And they vow to keep holding them until they win, at which point Canada will indeed collapse. The next referendum is about two years away.

Why is this important to Americans? We know what can happen when parties and politics become radically regionalized, as in, oh, the election of 1860. Now along comes Canada to remind us again what politically inspired, politically encouraged, politically hyped ethnic and regional differences can lead to: They can

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***Charles Krauthammer** is a nationally syndicated columnist.*
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threaten the very existence of a country as civil as Canada.

For 20 years, Canadian governments have tried to satisfy Quebec's demands by granting it more and more autonomy. Quebec has, for example, its own language police. It goes around fining people for putting up linguistically incorrect signs. Hence, too one of the triumphs of French Canadian separatism to date: the abolition of the apostrophe. (French does not have them.) Eaton's, Canada's Macy's, is now Eaton. Liberté!

There is more, of course. Laws to force immigrants to send their kids to French-speaking schools. Quasi-diplomatic status for Quebec at meetings of French-speaking nations. But all of this will not do. Quebec's French-speaking majority is not appeased. It wants more. It wants independence.

Quebec should be an object lesson to those American politicians who thrive on the promise of the multilingual, multicultural nirvana awaiting us if only we grant special rights and status to America's various languages, races and ethnicities. And the disaster awaiting us would be even greater than Canada's.

Why? Because Canada has one saving grace. For the most part, the French live in one place, the English in another. Canada's groups enjoy a neat geographic distinctness. They can have themselves a divorce and build a fence.

We can't. Americans are hopelessly, physically enmeshed with each other. Canada can afford its disastrous indulgence in ethnicity. It has a way out. We don't. TSC

Britain Fails to Debate Immigration Issues

An overcrowded island needs no new immigrants

by Ray Honeyford

Immigration is a subject which defies those rules of free speech we normally take for granted. Cant, hypocrisy and emotional blackmail confront anyone who seeks to expose the issues involved. I believe there are, broadly speaking, two reasons for this.

The Role of Race

First, immigration is associated with racial differences, and race is an entirely negative concept in the contemporary world. Some of the worst developments and atrocities in human history have been committed in the name of race: the Atlantic slave trade, racial segregation in the U.S.A., apartheid, and the unspeakable Holocaust — all these things are evidence of the wrong done by man to man in the name of race. And we are all smeared by the guilt these things have engendered: images, memories, and the expression of racial themes through art and literature serve to keep alive a general sense of disquiet and foreboding. So we prefer to turn away from any subject where race is involved; and where there should be informed discussion and debate about Britain's immigration problems there is a guilty, if unjustified, silence.

The Failure of Debate

Secondly, this unwonted intellectual climate has been ruthlessly exploited by those with an axe to grind about race: the sectarian Left, who perceive race conflict as a useful substitute for the defunct class struggle; the ideological boot boys of the anti-racist lobby; the self-interested apparatchiks of the race relations industry; a group of sociologists who

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have built a career on the allegation that Britain is a society riddled with endemic racism; certain well-meaning, but confused and naive church groups; and an increasing number of cynical politicians out for the ethnic vote. These groups, lobbies and individuals have a very effective method of suppressing dissent — they label anyone who dares to challenge their view of things "racist." Now this term is immensely powerful in a negative way: quite apart from its highly derogatory historical connotations, it sounds like a cross between "rapist" and "fascist" — and no one wants to be associated with such appalling things. So fear serves to extinguish rational anxiety, and an atmosphere of bogus concord is established — not least on the subject of immigration, despite the fact that there is considerable public unease surrounding the issue.

"The massive immigration into the United States in the post-war era makes clear that diversity can transform a coherent nation, loyalty to which was the duty of all citizens, into a country riven by nationalist, racial, religious, ethnic and linguistic conflict."

Even, perhaps especially, people at the highest levels of public office are prisoners of the notion that immigration must not, under any circumstances, be openly discussed and the public's anxieties addressed. When *The Daily Telegraph* had the temerity to publish a lead article on the subject, it was instantly admonished by the chairman, no less, of the Commission for Racial Equality (CRE), who accused the paper of harboring "racist notions." (14.3.97.) And when Nicholas Budgen, M.P., asked the Prime Minister in the House of Commons if he was in favor of maintaining the primary-purpose rule (which prevents marriages of convenience being used as a device to obtain entry) he was met with an evasive, cowardly and insulting response — a response on which the leader of the opposition immediately congratulated the Prime Minister (March 12, 1997).

I do not believe that anyone with genuine respect for free speech can possibly support the taboo which surrounds the discussion of immigration. Immigration has enormous significance for the future of this country, and it must be subject to the same open debate as any other matter of such public interest. So what is to be done? Ultimately, of course, the responsibility lies with the politicians, who have the power to enact appropriate legislation and to see it is enforced. But before that can happen parliament will need to feel the force of an informed public opinion. And that can only be created when the race-relations-industry philosophy is successfully challenged. The myths, contradictions and misrepresentations which are regularly retailed as race relations truth must be exposed to the public gaze.

For instance, we need to make clear that the allegation that this country is profoundly anti-immigrant — a key proposition of the race relations industry — is a serious distortion of the truth. Historically this country has had a world-wide reputation for taking in those who wanted refuge for genuine reasons; the seventeenth century Huguenots, the French emigre fleeing from the Revolution, the Jews escaping from persecution in imperial Russia, Ugandan Asians seeking protection from an African tyrant — all these things bear witness to this country's fundamental decency toward newcomers. Moreover, if this nation is as hostile to immigrants as we are told, why is it that people from every part of the globe, of every creed, race and class are desperate to come and live here? And, if it were, indeed, the case that we are as unwelcoming as the lobby alleges, why is it that the self-same lobby constantly challenges the need for immigration control? Surely, if the lobby really cares about would-be immigrants, it would, if its allegations are true, be doing its level best to prevent any newcomers from ever setting foot in the place. The truth is that this country is tolerant to a fault, and bears little relation to anti-racist fictions.

Is More Diversity Always Better?

We also need to challenge the notion constantly propagated by the race relations agitators that continually expanding cultural diversity is an inevitable and valuable consequence of immigration.

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This particular myth has been readily and mindlessly accepted by many influential groups, including large parts of the media — particularly the BBC — the trade unions, the welfariate, and, of course, the whole of the race relations industry and its supporters in academe. This essential falsehood is all the more dangerous and seductive in that it contains a grain of truth. Given manageable numbers, immigrants can, over time, enrich the cultural landscape. After all, they bring new languages, new religions, new ideas about marriage and the family, new notions about art and morality, and new ways of thought generally. Some — though not all — of these may prove valuable. I would argue, for example, that British Jewry has had an enormously beneficial influence on the indigenous culture.

"We need to raise a very simple but fundamental question: Does this country actually need immigrants? And the simple, blindingly obvious answer is, of course, no."

But this enriching process is by no means guaranteed. Apart from control of numbers there is the key question of just how far incoming cultures are compatible with the existing culture, and how many diverse cultures can be successfully integrated into an acceptable whole. There is probably a natural limit to the amount of human and cultural diversity with which any country can cope, while remaining a coherent nation with an independent identity. By no means are all countries characterized by diversity the better for it: Bosnia, Somalia, Nigeria, Canada, and, indeed, the USA — all serve to illustrate that, while enriching society in small doses, too much diversity can result in fragmentation and discord.

The massive immigration into the United States in the post-war era makes clear that diversity can transform a coherent nation, loyalty to which was the duty of all citizens, into a country riven by nationalist, racial, religious, ethnic and linguistic conflict. Pressure from large minority groups, enthusiastically supported by the American equivalent of our race relations industry, and by a profoundly unwise judicial activism — these things have destroyed the "melting pot" philosophy that created and maintained the most successful immigrant nation in history. They replaced it with the "salad bowl" metaphor by means of which loyalty to the nation and indigenous culture takes second place to the interests and aims of the racial, ethnic or cultural sub-group.

Britain now has a cultural diversity unique in its history. There are currently about 200 different language groups settled in this country. We have at least a million Muslims living here; there are about forty journals produced by and in the interests of minority groups, many of them in immigrant languages. The degree of diversity in the schools is truly astonishing — one London borough is trying to cope with no fewer than 97 different nationalities. Our libraries are awash with non-English literature and our emergency services are multi-lingual.

Is it unreasonable to raise the question of just how far this development can go, before we see the experience of the USA replicated here? Indeed, we may already be some way down the American road. For many years now we have had an extremely active multicultural lobby which encourages immigrants and their descendants to insist that their mother culture be sustained and developed at public expense.

This same lobby also encourages newcomers not to develop loyalty to British culture and institutions, which they regard with something approaching contempt. Norman Tebbit is a former Conservative cabinet minister, well-known and highly respected for his right-wing views, who is now a member of the House of Lords. When he suggested some years ago that immigrants, who enjoy all the privileges of British citizenship, ought to be developing loyalty to this country, he was excoriated by the whole multi-cultural and anti-racist establishment, and made to appear like a low-browed racist.

Is Immigration Under Control?

The third myth which needs to be exploded is that immigration is under control. There is abundant evidence that there has been no really effective control for many years. A recent bogus asylum-seeker scandal is the tip of a considerable

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iceberg. Legislative attempts to stem the flow have had very little success. For instance, a 1993 Act which was intended to solve the asylum problem has done nothing of the kind. In 1993 there were 22,370 asylum seekers; in 1994 there were 32,380; and, in 1995, 43,965. The 1996 Immigration Appeals and Asylum Act — fiercely resisted by the race relations industry and its supporters — is a positive step in the right direction in that it actually names countries whose citizens we will not accept for asylum purposes. The act has also speeded up procedures.

But there is so much in the way of corrupt and illegal practice associated with immigration that one can have little confidence that the law is being respected. (The latest in a long line of shocking revelations is that several thousand illegal immigrants are working in the Civil Service and as local authorities.) Nor should we forget that the pressure for the much-prized British right to settle here is not just confined to the so-called Third World. There is bound to be more immigration from the European Community, from Hong Kong — where 50,000 heads of family (about 250,000 people) have the right to settle here, and from South Africa — where there are 800,000 entitled to British citizenship.

Nor should we allow ourselves to believe we have some sort of obligation to immigrants just because we had an influx, post-war, when we were short of labor. What a nation needs in one period of its history is no guide to its requirements in other periods. Besides, the numbers involved in the late '40s were infinitesimal — about 10,000 at most. The number of people now entering Britain and remaining here is about 100,000 annually, which amounts to half a million every five years.

But we need to do more than create a more honest and open intellectual climate by challenging the distortions, half truths and misrepresentations of the race relations industry. We need to raise a very simple but fundamental question: Does this country actually need immigrants? And the simple and blindingly obvious answer is, of course, no. Why? Because this country is a small, overcrowded island with a population density far higher than that of most of the countries from which we receive newcomers. Because we have at least two million people on the dole. Because we have a housing shortage. Because crime is massive and endemic, and can only be made worse by immigrant groups such as Chinese triads and Jamaican yardies. And because continued immigration generates race relations tensions we can well do without.

Above all, we should seek severe limits on immigration because that is what public opinion — including a large proportion of ethnic minority opinion — demands. If the politicians continue to listen to the race relations industry rather than to the voice of most ordinary people, then the much-vaunted multi-culturalism could create divisions the likes of which this country has never known. TSC

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'Subject to the Jurisdiction Thereof'

Clause in the Fourteenth Amendment holds key to birthright citizenship

by William Buchanan

American law has long granted American citizenship to anyone born on American soil regardless of the status of the parents. The children of citizens and legal immigrants are citizens beyond a doubt. However, extending citizenship to children born to illegal aliens or to non-immigrants raises a lot of serious questions. We believe that legislation to deny such citizenship is both constitutional and necessary.

The ability to distinguish between citizens and non-citizens is a fundamental attribute of sovereignty and of nationhood. In recognition of this, our Constitution, in Article I, Section 8, grants to Congress the power "to establish a uniform rule of naturalization...."

Section 1 of the Fourteenth Amendment to our Constitution further states: "All persons born or naturalized in the United States *and subject to the jurisdiction thereof* are citizens of the United States...." This section overturned the Dred Scott decision and declared that former slaves and their progeny were American citizens. That the Congress and the States intended more than this is open to question. Just what did the framers of the Fourteenth Amendment mean by "subject to the jurisdiction thereof"?

Jurisdiction Further Defined

First of all there is **Criminal Jurisdiction**. All persons except accredited diplomats are subject to the criminal jurisdiction of the country in which they reside. This is a universal concept that has nothing to do with citizenship. Moreover, no jurisdiction has less to do with new-borns — they do not commit criminal acts! It is safe to say that this was not the kind of jurisdiction the Congress and States had in mind when they ratified the Fourteenth Amendment.

Diplomatic Jurisdiction is an accepted international custom, recognized in English and American common law, and confirmed by the Supreme Court, that children born to diplomats are citizens of the country their parents represent. No constitutional amendment was necessary to make that distinction. Nevertheless, the Vienna Convention on Diplomatic Relations (23 UST 3229) empowers the President to declare a diplomat *persona non grata* (Article 9).

Moreover, Article 31, while establishing the diplomat's "immunity from the criminal jurisdiction of the receiving State," does not exempt the diplomat from its "civil and administrative jurisdiction" in the case of private ownership of real property, or private actions as an "executor, administrator, heir or legatee," or in a "professional or commercial activity." That's a lot of "jurisdiction thereof" but surely not the kind the framers of the 14th were thinking of.

As to **American Indian Jurisdiction**: how exceeding fine the Supreme Court can grind this issue is illustrated in an historic case brought by a Native American [*Elk v. Wilkins*, 112 U.S. 94 (1884)]. John Elk was born in a part of the 1803 Louisiana Purchase that came to be called Nebraska — born subject to U.S. *military* jurisdiction. Nebraska, "settled" in 1823, accorded territorial status in 1854, and granted statehood in 1867, limited the vote to adult male citizens who were *bona fide* residents of the state for six months. Elk had renounced his tribal membership and by 1880 had lived in Omaha for over a year and claimed the right to vote in

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Nebraska since he was a U.S. citizen by birth based on the Fourteenth Amendment.

However, in a precedent, powerfully argued and never overturned, the Court ruled that despite his birth in the geographical area of the U.S., Elk was born to parents who owed their allegiance to a tribe of "Indians not taxed" and could only become a U.S. citizen by means of naturalization. Naturalization, the Court further noted, meant not only formal renunciation of his old allegiance but "acceptance by the United States of that renunciation...." In effect they ruled that the citizenship of a child at birth depended on the status of the parents. Though Elk's parents were never illegal aliens (try deporting an American Indian), their allegiance to their tribe meant that their child was not born a U.S. citizen.

"...a policy designating children of illegal aliens and legal non-immigrants as citizens provides a loophole that endangers our very sovereignty."

As to **Legal Immigrant Jurisdiction**, a legal immigrant to the United States, unlike a born or naturalized citizen, is "still subject to the jurisdiction" of the country of his or her birth in that he or she can be drafted to military service there and is entitled to benefits and privileges there that might be denied to an American citizen there — the right to vote, own property, attend public schools, obtain welfare, etc. But what of his or her child born in the United States?

This brings us to **Child of Legal Immigrant Jurisdiction**. Wong Kim Ark was born in California in 1873 to legal Chinese immigrant parents. But following a visit to China, he was denied re-entry into the U.S. because, it was asserted, he was not a citizen. In a 6-2 decision [*U.S. v. Kim Wong Ark,* 169 U.S. 649 (1898)], the Supreme Court declared him a U.S. citizen since he was "born...in the U.S. and subject to the jurisdiction thereof." They based this decision on English common law, past American practice, and, obviously, the Fourteenth Amendment.

American common law is descended from English common law and derives many of its precedents from it. But this emulation is not a slavish one. The argument in *Wong,* peculiarly, tied Section 1 of the Fourteenth Amendment to that segment of English common law which was based on the subject's allegiance to the king! Such citizenship, based on the place of birth, was designed to impose obligations to the king upon a child-subject. The involuntary nature of this remnant of feudalism is profoundly at odds with the American tradition of voluntary memberships and would seem to be among those aspects of English common law that we would have jettisoned — as the British themselves did in 1983.

Child of Illegal Immigrants Jurisdiction. But let us accept the Court's decision in *Wong* and turn to the question of whether the children of *illegal* immigrants are entitled to citizenship — for the government has extended this decision to confer citizenship on the children of illegal immigrants and on the children of holders of non-immigrant visas (foreign students, temporary workers, tourists, etc.).

In 1868, when the Fourteenth Amendment was ratified (and in 1873, when Mr. Wong was born) there was hardly such a thing as an *illegal* immigrant and non-immigrants were limited to diplomats, newsmen, and a few tourists and businessmen. At that time there were less than 40 million Americans, the frontier was still "open," there was no border patrol, and welfare was mostly a limited province of the private sector. The framers of the Fourteenth Amendment surely did not imagine, let alone contemplate, a situation where hordes of aliens would deliberately violate our borders and laws precisely in order to obtain benefits that might accrue from the birth of a U.S. citizen child.

By 1898, however, the concept of *illegal* immigrant was well understood and the Court was careful to note that Wong Kim Ark was a child of *legal* immigrants. They refer to the fact that the parents enjoyed a "permanent domicile and residence" (pp.652,653,705), that the parents were "domiciled residents" (p.651), and that the parents were "domiciled in the U.S." (p.696). The dictionary meaning of the word "domicile" is "permanent *legal* residence." One can have many residences but only one domicile. Is it conceivable than an illegal immigrant here could have a permanent legal residence here?

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With 5,000 miles of land borders and many more miles of coastline, abundant immigrant and non-immigrant visas, modern communications and air travel, a policy designating children of illegal aliens and legal non-immigrants as citizens provides a loophole that endangers our very sovereignty. In 1992, an estimated 96,000 babies were born to illegal alien women in California at an initial cost to Californians of $230 million. As things stand now, giving birth to a U.S. citizen only takes a moment or two on any patch of U.S. soil — a future generation could wake up to discover that every parent on Earth had managed to find a way to give birth in the U.S.!

The plain meaning of the Constitution can be extended to related situations not contemplated by the framers — the Fourth Amendment protection against unreasonable search and seizure, for example, has been extended to cover wiretaps. But can the meaning of an amendment be extended without limit? Did the framers of the Fourteenth Amendment really mean to say: "Alien! Break our laws and we will reward you."? Did they intend to threaten our sovereignty? Did they regard the Constitution as merely a cleverly-drawn contract for self-destruction? Surely not!

We believe that the scope of the Fourteenth Amendment and of the Supreme Court decision in *U.S. v. Wong Kim Ark* does not extend to the children of illegal aliens or legal non-immigrant visa holders, and we call on the Congress to pass legislation which states:

> *Any person born to parents neither of whom is a citizen or a national or a lawful permanent resident of the United States but either of whom is a citizen or national of that other country, shall be considered as born subject to the jurisdiction of that other country and not subject to the jurisdiction of the United States as described in Section I of the Fourteenth Amendment of the Constitution and is not a citizen of the United States or of any State by reason of birth in the United States.*

Now comes the hard part! There will have to be some procedures for confirming the status of the baby. Hospital workers and separatists will object to this — they care for people, not Americans. The U.S. government might offer to pay the hospital bills for the delivery and care of illegal alien babies — the feds, after all, are responsible for the problem and many cash-strapped hospitals may respond to this. Indeed, there will have to be provision for the care of illegal alien babies that are born deformed or with serious genetic or other diseases.

We may have to urge parents to establish their status prior to hospitalization. The INS may have to assist in the identification process. A dual state and federal Birth Certification and Social Security Number process is another possibility. For babies found to be ineligible for citizen status, a special birth certificate would include a nationality block in which would be entered the nationality of the mother or the father. If the parents were found to be stateless, the child might be entitled to the same status we then assign to the parents. In any case, we should study the methods used by other countries.

"Did the framers of the Fourteenth Amendment really mean to say: 'Alien! Break our laws and we will reward you?' Did they intend to threaten our sovereignty?"

So far as **Constitutionality** — it has been argued that only a constitutional amendment is sufficient to change current practice. Obviously, we think legislation will be sufficient. Moreover, the constitutional amendment is unlikely to pass — the American people just don't know the issue. Should legislation be overturned as unconstitutional, however, the publicity such a case would generate might make the constitutional approach feasible. Legislation is the obvious place to start.

There will be protests by the "open border" set. There will be cries of "1-800-Big Mommy" and nonsense claims that having a child will now require government approval. But as Chief Justice Melville Fuller noted in his dissenting opinion in *Wong*: "[American citizenship] is a precious heritage as well as inestimable acquisition." Millions have died or been maimed to defend the values we hold dear and the lives we live as U.S. citizens. Awarding American citizenship automatically to the children of aliens who break our laws or are just passing through, cheapens it beyond all recognition. TSC

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Aliens in LA County Jails

Suppressed report offers revealing view of crime

by Linda Thom

Nationally, many Republican politicians are joining the ranks of those who believe that the party should steer clear of the immigration issue. They reason that to discuss the negative impacts of mass immigration will alienate a huge new immigrant voting block. Even in California, with the largest immigrant population in the nation, Attorney General Dan Lungren (R) has formulated a Republican strategy to embrace immigrants and, hopefully, their votes by focusing on immigrants' positive contributions. With this strategy, he hopes that Republicans can win back the large block of immigrant votes lost to Democrats in the last election. Mr. Lungren has announced his candidacy for the Republican nomination for Governor when Pete Wilson's term expires.

Why, one might wonder, are politicians unconcerned about the very large bloc of native-born voters? Political pundits and immigration reform advocates continue to speculate about this issue. Perhaps a contributing factor is that Americans, unless they live at ground zero, do not have strong enough concerns to be willing to take action. Perhaps also many do not understand the full scope of immigration's economic, social and cultural consequences. Clearly, the media do not often report some of the most negative aspects of mass immigration.

One of immigration's most negative and least discussed impacts is crime. California's top cop is Attorney General Dan Lungren. His department keeps the criminal justice data which are summarized annually in a publication entitled *Crime and Delinquency in California.* Attorney General Lungren takes full credit for the *recent* decline in crime. What he does not tell Californians is how precipitously crime would have declined were it not for immigration, even though the data collected by his Department of Justice clearly demonstrate the connection.

Los Angeles County is the nation's immigration epicenter and crime is declining in Los Angeles. Demographic experts note that young males commit most crimes. In Los Angeles the 15- to 24-year-old population plunged by 23 percent between 1990 and 1996 (McDonnell). During the same period, according to Census data, thousands of native-born persons moved out of Los Angeles and thousands of immigrants moved in. With this information, one might project that crimes committed by immigrants would be increasing both numerically and as a percentage of total crimes — and that is precisely what is happening.

These trends can be seen by examining the population of the Los Angeles County Jail. Jail is the abode of misdemeanants whose sentences are less than one year, and felons who are awaiting trial.

Table 1
Deportable Aliens in Los Angeles County Jail

Category	6/95	5/90	% Change
Total Inmates Released* from County Jail	14,446	17,774	**down** 18.6%
Foreign Born Interviewed	3,983	3,327	**up** 19.7%
Total Deportable Aliens Encountered	2,416	1,933	**up** 25.0%
Percent Deportable Aliens of Total Released	16.7%	10.9%	**up** 53.2%
Aliens Arrested by INS	1,504	1,305	**up** 15.2%
Aliens Cited Out/Bonded Out	377	230	**up** 63.9%
Aliens Sent to State Prison	535	398	**up** 36.7%

*Released does not mean set free. Most aliens were arrested by the INS or sent to state prison.

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Table 2
Disposition of 1995 Deportable Aliens Arrested by the INS

Arrested by INS	1,504	62% of total deportable aliens
Voluntary Returns	621	41% of INS arrests
Ordered deported	617	41% of INS arrests
Transferred for deportation hearings elsewhere	183	12% of INS arrests
Released Pending Investigation	62	4% of INS arrests
Still Pending, Granted Relief or Closed	21	1% of INS arrests

Upon conviction, felons are transferred to state prison. County jails constitute one of the largest financial burdens of immigration for local government. LA County's jails are severely overcrowded. The media carry regular stories detailing the county's jail problems and how hundreds are released before their sentences are complete because of crowding. While other factors contribute to jail overcrowding, immigrant inmates are a large and growing share of the overcrowding.

For example, while the average length of stay in county jail is 33 days, the average stay for deportable criminal aliens in 1995 was 74 days. Immigrants who were sent to state prison upon conviction for felonies stayed an average of 104 days in the Los Angeles county jail system. The stays could be shortened if the INS would pick up the deportable aliens sooner but the INS lacks the prison capacity to do so, therefore, the financial impact falls on counties.

In 1990, Los Angeles County conducted a special study of deportable aliens in the criminal justice system. Deportable aliens may be legal or illegal aliens but mostly they are illegal. Updated data from 1995 show a steady growth in immigrant inmates. The new statistics, as yet unpublished, were obtained by the author from a county employee. Table 1 compares one-month samples from 1995 and 1990.

The one-month samples from 1990 and 1995 show that although inmates leaving county jail decreased by 18.6%, foreign-born inmates increased by 19.7% and deportable aliens increased by 25%. Note, also, the large increase in deportable aliens who were cited or bonded out of jail and the large increase in deportable aliens convicted of felonies and sent to state prison.

In the June 1995 sample, the most common charge for deportable aliens was drug selling/possession (27% of total). The next highest was driving under the influence (16%); burglary (5%), and spousal assault (4%). Fifty-eight percent of the aliens were charged with commission of felonies, 40% with misdemeanors and 2% with other less serious violations. As with criminals the world over, all but 8% of the deportable aliens were under 40 years of age.

Table 2 shows the disposition of the 1,504 deportable aliens arrested by the INS.

The most disturbing part of the study is the recidivism rates. [*See Chart 1 below.*] Since their release in 1990, Los Angeles County tracked 346 criminal aliens. The overall recidivism rate is 75%. The average subsequent contacts were 4.1, and 96, or 28% of the sample, had 5 or more arrests. The pie

Chart 1. Recidivism among released criminal aliens

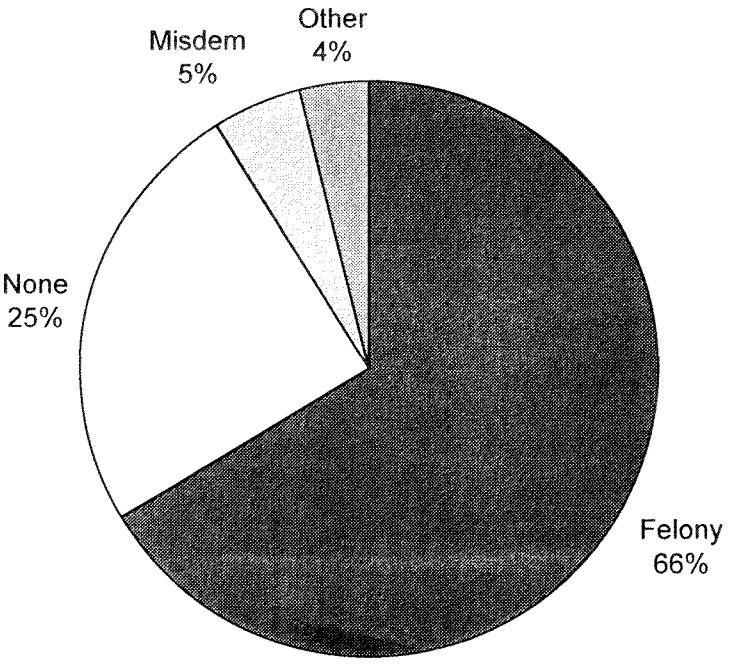

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chart shows the nature of the rearrests and other subsequent contacts. The numbers add up to 101% because of rounding.

Two-thirds of the subsequent contacts were felony arrests. "Other" contacts include citations, illegal re-entries, deportation hearings, auto accidents and the like. Of the 1995 sample, 300 criminal aliens were tracked and the overall recidivism rate in just one year was 48%, almost half. Criminals used an average 5.3 names, and the average false birth dates were 2.2. In both the 1990 and 1995 samples, eight out of ten subsequent rearrests were made in LA County.

Perhaps Los Angeles County will release the jail study but maybe not. Nevertheless, people in Los Angeles County and Southern California seem to understand the immigrant crime problem. The connection is easy, really. Reports of the Ukrainian suspect in the Cosby murder make national headlines but other increasingly routine homicides in Southern California do not. For example, at a semi-rural high school just outside Santa Barbara, an alleged Vietnamese gang member gunned down a Hmong youth in a drive-by shooting. Two other murders, one of a wealthy matron and another of a Mexican illegal alien, have been committed in the last six months in Santa Barbara. The death of the matron appears to have been connected with burglary and the death of the Mexican national appears to have resulted from a barroom quarrel. Both suspects, illegal aliens, fled to Mexico.

In poll after poll, Americans say they want less immigration and in other polls they say that one of their most serious concerns is crime. One can understand why politicians avoid discussing immigration; they want immigrant votes but why is discussion of immigrant crime so taboo? Perhaps, like teen pregnancy and homosexuality, the subject of immigrant crime will "come out" in time. To begin healing the dysfunctional family dynamics caused by alcoholism, the family members must stop whispering and start talking. Failing to discuss immigration and immigant crime will not make the problems go away. To heal our American family, those who have the immigrant crime data must release it and those who are concerned must discuss it. TSC

REFERENCE

McDonnell, Patrick J., *Los Angeles Times*, June 7, 1997, "Highly Touted Theory on Age, Crime Disputed," p. B1.

Restraining the American Brain

[*This letter to the editors of the* Wall Street Journal *is in line with the feature section of the Spring 1997 issue of* The Social Contract *which was devoted to the competition for high-skilled jobs faced by American scholars.*]

The April 29, 1997 "Managing Your Career" article in the *Wall Street Journal* (WSJ) by Hal Lancaster titled, "Landing a Job in the Sciences Takes Some Creativity" was significant. It covered some of the reasons why today's young scientists are having serious career difficulties. However, a significant aspect was omitted. The factor is the extremely high numbers of science and engineering (S&E) immigrants being admitted to the U.S., especially since 1990. The high level of S&E immigration displaces native-born Americans as well as earlier generations of immigrants with younger, inexpensive, and "pliant" highly-skilled workers. The displaced S&Es are typically able to locate work that makes minimal use of their training, an extremely wasteful and unwise practice.

The concern about immigration was raised in a September 4, 1996 WSJ article "Math PhDs Add to Anti-Foreign Wave." We the undersigned request that additional press coverage be given to this unprecedented labor situation. Many of us have websites that provide additional background information, with computer addresses available on request.

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Welcome to America

Still the immigrant's retirement haven

by Don Barnett

According to recent reports, about 500,000 elderly legal immigrants would have lost welfare/Medicaid under the 1996 welfare law. "It ought to weigh on the consciences of those [lawmakers] who knew what they were doing was wrong" in the words of a *Washington Post* column by David Broder.

Every major domestic newspaper has done a front-page piece on the putative effects of barring elderly immigrants from Supplemental Security Income(SSI). Typical is a Molly Ivins column about those who "worked hard, paid their taxes ... now talking about committing suicide. Just what we always wanted to do: drive a bunch of retired Japanese gardeners and 80-year-old Hispanics whose backs are bent from years of field work to commit suicide." Actually, most non-citizen users of SSI are not Hispanic; Japanese comprise less than half a percent of noncitizen users of SSI. It's entirely possible that not even 100 of the more than 800,000 non-citizen recipients of SSI are Japanese gardeners.

The profile of those who have contributed most to recent growth in immigrant SSI usage is very nearly the opposite of that propagated by the "imagineers" of the national media — that is, they are recent arrivals who have not worked in the U.S. About 40 percent of the growth in SSI usage is in humanitarian categories. Former Soviets, Vietnamese, and Cubans — all humanitarian admissions — occupy second, third and fourth place respectively among non-citizen users of SSI/Medicaid. Under the new law, they are still eligible for welfare 30 days after arrival, but must become citizens in order to continue receiving benefits after 5 years. Most of the rest of the growth is from non-refugee immigrants who enter the system as soon as legally possible, that is, 5 years after arrival. Indeed about 60 percent of current immigrant users of SSI/welfare have been in the country for less than 6 years.

The claim that barring noncitizens from welfare would cause 500,000 elderly immigrants to lose benefits comes from a report released by the Congressional Budget Office(CBO). In reporting the estimate, no one bothered to mention that CBO's analysis was based on the assumption that only one-third of elderly noncitizens receiving welfare would naturalize by the year 2002 even though all would be time-eligible for citizenship. Among many rickety assumptions, this, according the authors of the report, was the most uncertain.

The campaign against the reform went beyond gonzo journalism and gave birth to a new PR tactic — the suicide list. No doubt we shall next be hearing about "national health insurance suicide lists" while opponents counter with "IRS suicide lists." But even before Ted Kennedy took to the Senate floor with his "immigrant SSI suicide list" all hope for rational debate on the topic had been washed away in a tide of cliché and misinformation.

At last count welfare reform had triggered 14 proposed bills with the sole aim of securing welfare for noncitizens. Six of the proposed bills mandate an easing of naturalization procedures including a bill to allow certain Filipinos who participated in World War II to naturalize in the Philippines. Will we next set up voting booths and Medicaid clinics around the world so that the new citizens can avoid ever setting foot on U.S. soil?

A legislative compromise will probably allow those immigrants receiving disability SSI when the welfare bill was signed to remain in the system. Under some proposals those currently receiving old-age SSI who manage to requalify as disabled will also be covered. As well, the cutoff date will be extended allowing current recipients more time to naturalize. A small number, nowhere near the latest mythical number of 300,000, will actually lose benefits because they will not or cannot naturalize. Most of those will

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depend on their children as they promised they would when they immigrated. There will be an even smaller number of needy recipients who will actually lose benefits; for some, temporarily, until they have passed the citizenship test.[1]

States and localities cannot be blamed for doing everything possible to keep welfare recipients on the federal tab. But, could the interest groups, "open society" foundations, or even the very organizations which sponsor new arrivals be counted on to lend some direct assistance however slight to individuals who find themselves temporarily cut off from a check or in need of food assistance? That was the question raised by Valery Weinberg, the publisher of *Novoe Russkoe Slovo*. *Novoe Russkoe Slovo* is the largest Russian language newspaper in America with about one million subscribers world wide. Mr. Weinberg states that without public assistance the stream of migrants would "begin to dry up." Under current reforms no such slowdown is on the horizon, though there might be a change in the mix of future migrants from those who find citizenship a daunting prospect to those willing and able to claim the "priceless possession" as it was once called by the Supreme Court.

Responding to concerns of his readers Mr. Weinberg met with representatives of United Jewish Appeal, the Hebrew International Aid Society, and the New York Association of New Americans — leading organizations in refugee resettlement. (Former Soviets, mostly Jewish refugees, are the fastest growing immigrant group of SSI users, in some recent years growing at an annual rate of 34 percent.) The answer to Weinberg's direct question about assistance from the charities was a direct "no." Pleading lack of funds, the mega-charities promised instead to "fight to the end" for the "rights" of the welfare recipients. Resources go much further when put into lobbying and into backing efforts to sue federal tax payers through legal challenges to the law. Also, a great deal of money is needed to "educate the public" about the need for current levels of immigration. As Thomas Sowell stated recently, "Those who thus raise the cost of immigration to the American people are the loudest in demanding freer immigration."

Many would gladly accept allowing all current recipients to remain in the system if additional numbers could be prevented from piling on. To be meaningful that would mean barring both noncitizens and those who naturalize for the purpose of meeting welfare eligibility requirements. Naturalizing one's parents is an easy and legal way to shed responsibility for them. The new law, even before it was corrected, did not address this and therefore will not, in its latest incarnation, do much about growth except shift it to the citizen category. Without changes in the mix of immigrants there will be only a slight impact on current numbers and future growth. The Social Security Administration currently tracks SSI usage by noncitizen and citizen categories. At the very least it should attempt to report a true picture of immigrant usage by tracking a "foreign-born" category which would include naturalized citizens.

In the absence successful reform, SSI/Medicaid for elderly non-citizens is projected to hit $43 billion a year by the time the budget is to be balanced in 2002. With *this* reform the cost might be, well... 43 billion a year, but shifted to the citizen category where it won't be noticed for a while.

The *real* story behind welfare reform is that retired immigrants who wait 5 years and pass the citizenship test gain a lifetime entitlement to public support. For refugees planning on becoming citizens that entitlement begins 30 days after arrival. As caps on other forms of welfare begin to take effect for native born Americans, the arrival of elderly refugees and immigrants with a lifetime entitlement to cash, food and medical care will no longer be so easy to overlook. In fact, few consequences of welfare reform have the potential for mischief like the moment in the not too distant future when newly arriving immigrants are ushered onto the dole while native-born Americans are pushed off it. Ethnic group infighting over social services, a subplot of the welfare debate, has been largely ignored in the media. Though it crackles through the ethnic press and in the streets, the leadership of the contending sides seems to understand that all sides will lose if the conflict breaks out into the open. It's doubtful this public civility will survive full implementation of welfare reform. By that time those who "ought to know better" might actually have something to write about. TSC

[*Editor's note: Since the submission of this article, Congress has given SSI/Medicaid back to all non-citizens, aged and disabled, who were receiving benefits as of August 1996.*]

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A Time Bomb Ticking Away

by Dan Walters

They're just columns of numbers printed on pieces of paper. But a series of recent statistical reports constitute a time bomb waiting to explode with far-reaching and potentially disastrous social, economic and environmental consequences.

The first was a herculean compilation of data by a private organization called Children Now, demonstrating conclusively that California's children face increasing risks of poverty, medical problems, cultural deprivation, educational failing and even death.

Then came another report from the Washington-based Center for the Study of Social Policy that not only confirms the Children Now findings but reveals that in overall conditions, California's children are 33rd among the states.

Next, the state Department of Social Services issued what should be a very sobering report on teenage pregnancy in California. In 1987, the state's teenage birthrate was below the national average, but just five years later it had soared to twice the national average and the highest of any state. One in every 15 teenage California girls gave birth last year, more than half of the women now receiving welfare checks had their first children as teenagers, and 31 percent of all births in California are to unmarried women.

Finally and most devastatingly, the state Department of Finance issued a prediction that California's explosive population growth, largely the product of a sharply increasing birthrate, is likely to continue unabated for decades to come.

The high levels of foreign immigration — primarily from Asia and Latin America — that California began to experience in the late 1970s have produced a bumper crop of babies. Immigrants were mostly young and came from cultures that value large families. A decade ago, California women were giving birth to about 300,000 babies a year and the birthrate was not much above a replacement level. But today, more than 600,000 babies are being born each year and the overall birthrate has climbed well beyond the replacement level and is expected to continue to rise for decades to come.

The Department of Finance projects that California's population, now about 32 million, will double in the next 50 years, with babies being the chief component of that increase, supplemented by continued high levels of foreign immigration. It is the equivalent of adding a San Francisco to California's population every year or a Massachusetts every decade.

The potential consequences of such numbers are staggering. Take, for example, the impact on schools. California must build 20 classrooms each day, 365 days a year, for as long as we can project into the future just to keep pace with school enrollment growth, plus find the money for teachers' salaries and other operational expenses. Without any adjustment for inflation, simply keeping up with the additional two million schoolchildren expected to be in the schools 10 years from now will cost taxpayers $9 billion more each year — money that cannot be spent on desperately needed improvements in educational quality that will prepare youngsters for a rapidly changing economy.

The potential impacts on housing, transportation, water supplies, waste disposal systems, parks, air quality and other environmental and infrastructure elements are equally severe.

Politicians shun these long-term issues because they are complex and carry overtones of ethnic and generational conflict. But the quality of life for all Californians, rich and poor, Anglo and non-Anglo, elderly and young, is under assault. Our very existence as a society depends on our ability to defuse this demographic time bomb before it explodes in our faces. TSC

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Intermarriage:
A solution — or a problem?

Book Review by Paul Gottfried

Nathan Glazer's newest book may be described as a defense of multiculturalism written with second thoughts. On the one hand, Glazer agonizes at length over the exclusion of blacks from the American melting pot. He notes that even certified liberal pluralists Louis Brandeis and John Dewey did not include blacks in their celebrations of a pluralist America. Even now an overwhelming percentage of American blacks live with and marry others of their race. Multiculturalism, contends Glazer, has been made inevitable because blacks have been kept out of the American social mainstream. It is a form of recognition for those who have not been allowed to participate in the American success story. Whereas women, Hispanics, and gays have taken advantage of the media-approved drive for inclusiveness in educational curricula and public life, Glazer treats these other minority demands as passing signs of the time: "Despite all these participants in the campaign for multiculturalism, the movement is given its force and vigor by our greatest democratic problem, the situation of African Americans."

We Are All Multiculturalists Now
by Nathan Glazer
Cambridge: Harvard University Press, 1997
179 pages, $19.95

Now when Glazer asserts that "multiculturalism has won" and that "we are all multiculturalists" he is making, whatever else he's doing, a moral judgment. He believes that all reasonable people would agree that blacks in the U.S. have been given a bad deal; and that making a place for their history and customs in educational and public life is the very least we can do for these socially unacknowledged Americans. Such a measure, according to Glazer, has nothing to do with minority quotas which are about "jobs and admission."

What he hopes multiculturalism will do is describe "the reality of ethnic and minority diversity in this country" without glorifying or demeaning any group. And he considers this fair not only because of African-American marginalizations but because he and the members of other white minorities were also once excluded from the received American culture and history. Jewish immigrants and their families had been forced to listen to WASP accounts of the American past which minimized their own contributions to civilization. This had created among Glazer and his peers a sense of exclusion, which they should not have been forced to suffer.

On the other hand, Glazer is troubled that multiculturalism in practice has taken "upsetting" forms, from Afrocentrism and the insistence on "African and Negro primacy in technological achievements" to having multiculturalists impose "strenuous quotas in admission offices and faculty hiring." Glazer also indicates that he enjoys the study of European Christian societies to which he had been exposed in school, and he asks whether blacks will benefit more from learning about Martin Luther King and Malcolm X than from reading about Washington and Lincoln. Again and again he treats multiculturalism less as an attempted expansion of consciousness for nonblacks than as a sop to a group that remains behind. Presumably such a program would not be necessary if the race problems did not persist.

Despite the interesting stretches of American cultural and social history, Glazer's book is gravely marred by questionable assumptions. It treats

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multiculturalism in almost total isolation from the political context out of which it developed — not only in the U.S. but throughout the Western world. It is modern public administration in its social engineering mode that has imposed this policy upon often-grumbling subjects. It has had assistance, needless to say, from the verbalizing class and from disgruntled or vindictive ethnic minorities, but much of what the state has done to change culture it has carried out against the popular will, as in the obvious case of the immigration policies pursued by almost all Western countries since the 1960s. Glazer talks earnestly of how "we Americans" began to think differently about pluralism during the struggle against Hitler. Such language, however, is misleading for two reasons: (1) government propaganda and academic tracts are not the same as what most people believe even in a most putative democracy; and (2) the multicultural initiatives and often deliberate flooding of the U.S. and Western Europe with non-Westerners as a result of an altered immigration policy go back to the 1960s, not to 1941.

"More likely [the 'common society'] will be invented through a collaboration of government social engineers, multinationals in search of cheap labor, and assorted minority spokespersons."

It is furthermore doubtful that black multiculturalists are generally as moderate as Glazer suggests. Unlike Quebec separatists and Corsican nationalists, he assures us, black and other multiculturalists "seek inclusion and equality in a common society." Glazer cites no hard evidence for this problematic contention. Moreover, the kind of anti-white anti-male propaganda that he himself criticizes in proposed multicultural curricula suggests something very different from his statement of faith. Though Glazer may be right about the multicultural quest for a "common society", it is doubtful that that society will bear much resemblance to the American past. More likely, it will be invented through a collaboration of government social engineers, multinationals in search of cheap labor, and assorted minority spokespersons. Most of the Hispanic boosters of multicultural America were of course not victims of racial segregation but those recently arrived in the U.S.

The most bizarre argument made in Glazer's book is that blacks continue to be disadvantaged inasmuch as they have little opportunity to marry out. Outmarriage seems to be the solution he has in mind for America's racial problem, particularly in Chapter Seven entitled, "Can We Be Brought Together?". Glazer is genuinely bothered that the very low rates of intermarriage between blacks and whites, about two percent, is "rising only slowly". Blacks themselves appear most comfortable living among and marrying other blacks. Glazer accounts for this by pointing to their forced exclusion from white society. There is nothing abnormal in racial and ethnic minorities preferring endogamous and ingroup relations to other kinds, though, like Jews and blacks, they may also blame this situation on prejudice.

Glazer contrasts blacks to the U.S.'s predominantly Eastern European Jewish minority, apparently believing that blacks would be more like Jews if they were subject to less prejudice. When he and Daniel P. Moynihan wrote *Beyond the Melting Pot* in the 1960s, Glazer reminds us, Jews were intermarrying at about the same rate as blacks are doing now. Thirty years later, however, the intermarriage rate for Jews has risen to over 50 percent, while the rate for blacks, according to him, has moved very little. But such a comparison has nothing to teach us. The fact that Jews are intermarrying in large numbers has not made them friendlier to Western Christian society. Indeed, their high rate of intermarriage has not prevented open hostility, at least as represented by Jewish organizations and self-identified Jewish authors. Christian civilization now seems as inherently anti-Semitic and implicated in the Holocaust as ever. Though not all American Jews may believe this, the point being made is that a high rate of Jewish intermarriage has not produced published evidence

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of greater Jewish goodwill toward the Christian other. As long as twentieth-century American Jews lived apart, they did not feel compelled to reconstruct the surrounding society or to vent atavistic hostilities.

Correspondingly, there is no reason to think that if blacks and whites rush to intermarry, the blacks will come to respect whites and white culture. Such a relation may well create insecurity and bitterness rather than lead to interracial good feelings. Nor will blacks necessarily improve their social positions through intermarriage. Socially mobile blacks have moved up by the time they marry out, a fact that intermarriage simply underscores. Underclass blacks who choose white mates are most likely to pick and certainly to obtain someone of their own status.

Moreover, Jews as a rule, did not rise professionally or economically by marrying gentiles. They intermarried once they had risen; and they rose, as Glazer shows in his earlier, less utopian writings, by building on ingroup strengths and associations. The same was true of other white ethnic groups and, more recently, of Asian Americans. Glazer's obsession with the curative power of interracial marriage is precisely that: an unseemly quirk that gets in the way of honest thought. One can only hope that this distinguished sociologist gets over his particular hangup. TSC

Population and Consumption

Two contrasting approaches

Book Review by John F. Rohe

First Worlders identify burgeoning population pressures as a major threat to their successors. Third Worlders, on the other hand, identify the threat as excessive consumption in other places having replacement level fertility.

Who is right?

Both are.

Two forces are conspiring against our successors. Residents of a finite planet having a net daily population gain of 250,000 people (total births minus total deaths) engages in self- deception if they believe the fearsome demographic trend can continue indefinitely. The drive toward immediate self-indulgence, promoted by consumerism in a shopping culture, also bears the seeds of self-destruction. Possessed by our possessions, we drift from traditional notions of the common good into a realm of aggressive resource depletion.

An Agenda for Sustainability: Fairness in a World of Limits
by William M. Bueler
Cross Cultural Publications, 1997
(1-800-561-6526)
136 pages, $15.95

Ending the Explosion: Population Policies and Ethics for a Humane Future
by William G. Hollingsworth
Seven Locks Press, 1996
254 pages, $17.95
(Available from the Social Contract Press, 1-800-352-4843)

Ending the Explosion and *An Agenda for Sustainability* are two recently published books addressing the parallel threats of population and consumption, respectively, and both books set forth plans for action.

In *Ending the Explosion*, Hollingsworth capably outlines the current demographic drama. Although the rate of population growth is declining, the number of people is still growing at a frightful rate. During the population conference at Cairo, Egypt in September, 1995, the world population was 5.6 billion. By 2100, it will swell to 12 to 17 billion. To place this in perspective, an increase of just 2 billion persons would equal the world's entire human population as of 1930. If fertility holds constant at 1990 levels, the world

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population in 2100 could be over 100 billion.

Populations have a certain "demographic momentum." A high proportion of young people reside in nations with high fertility rates. As these young move through their fertile years, they will assure a growing population for decades. So even if the high fertility nation immediately implements a plan for only two offspring for every couple, the population will still surge for decades to come.

"Unless humanity wishes to forfeit any good chance of humanely limiting itself to eight or nine billion persons, the time for nations to act in earnest is now."

Hollingsworth also illuminates the debate between those clinging to the romantic mystique of the frontier and others willing to acknowledge the existence of limits. On the one hand, he finds utopians relying on an ever-expanding resource base and limitless human ingenuity driving the forces of consumption. On the other hand, he observes the sobering reality of deforestation, wetland destruction, species extinction, desertification, soil erosion, ground water depletion, carbon dioxide buildup, ozone depletion, massive population growth, widespread malnutrition and other scarcities.

Hollingsworth posits the following: "Unless humanity wishes to forfeit any good chance of humanely limiting itself to eight or nine billion persons, the time for nations to act in earnest is now."

Hollingsworth's plan for responding to population concerns is sensitive to the differing cultural, social, political and human pressures driving this juggernaut. He sets forth a compelling case for seriously responding to the population crisis, yet his book clearly urges the avoidance of any coercive action in reproductive choice: "governments will need to be especially careful not to pose coercive reproductive choices to impoverished persons."

So just what is coercive? Hollingsworth explains: "Though the resulting deprivation may fall far short of intolerable, if it is closer thereto than to inconsequential, the antinatalist incentive deserves to be deemed coercive. Similarly, though the deprivation may be more than trivial, if it is closer to zero than to intolerably heavy, the incentive should — as to reproductive freedom — be deemed non-coercive."

Hollingsworth seems to suggest reproductive incentives not cross the midpoint on a spectrum between coercive and non-coercive. His fine distinction might be hard to follow in actual practice. Coercion may be a successful tool in some circumstances, such as China, but not in others. Furthermore, how does one meaningfully draw a distinction between non-coercive tax incentives (which might impose a lasting hardship on a large family) from short- term coercive incentives?

Hollingsworth might also consider adopting a more cynical approach to his choice of terms. For example, the "antinatalists" are generally the good guys in his book. It may be more endearing to be for something than against something else. Why not label the good guys as "pro-stability" advocates, or the "pro-sustainability" enthusiasts?

In *An Agenda for Sustainability*, William M. Bueler observes that the present economic system does not consider itself "healthy" unless it is engaged in perpetual growth. Consumption is an "inherent aspect of this growth." The "American Dream" in our "modern, mobile, media-saturated" democratic society suggests it is easily attainable by all. Under the present economic reality, economic disparity is widening. According to the Congressional Budget Office, during the 1980s, households in the top one percent saw a one hundred percent real income increase, while the bottom twenty percent declined six percent. Those in the middle stayed even, but only because more spouses were employed outside the home. In 1960, top executives in the United States earned forty-three times as much as their average workers, but in 1990, their incomes were one hundred times higher. A comparable Japanese competitor earns seventeen times as much as his average worker.

In an effort to lift the bottom, the prevalent response calls for more "growth." This should mean higher incomes, a more responsible citizenry and a

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greater stake in the democratic union. It is Reagan's "trickle down theory." Growth, however, has not furthered these goals. Instead, it has widened the disparity and the ecological consequences of growth are all too evident.

Bueler has a vision to pave a path to a more sustainable future. Some of his measures will seem harsh, and will break precedent. His remedies are well-conceived, yet they are not likely to attain a level of acceptability unless we are willing to concede our present path is unsustainable, foolhardy and hazardous. Accordingly, he must first assail the unexamined conviction that growth should be an end in itself. In the words of Edward Abbey, "growth for the sake of growth is the ideology of a cancer cell."

A sustainable society, in Bueler's view, will maintain a safe and clean environment, will not be over-populated, will provide equal opportunity, will be economically prosperous, will place a decent life for all above extravagance for some, will be intellectually and culturally free and dynamic, will encourage and reward moral and responsible behavior, and will encourage political participation of all. Mobilizing a sufficient political will requires us to challenge the consummate addiction to growth.

After identifying the finitude of natural resources, and the strains we have imposed on our growth-oriented economic system, Bueler next identifies values, such as thrift, moderation and restraint as essential to the transition toward a sustainable state. He points out that "the mere existence of extreme wealth and extravagance at the top of the society legitimizes the pursuit of ever greater wealth and consumption by the entire society." He sets forth a compelling case for limiting wealth and narrowing the range of incomes.

Profit motives in a capitalistic economy will continue to be the primary means to increase productivity and efficiency; however these incentives cannot achieve resource conservation and environmental protection. Although the public sector cannot create social and moral values for ecological and political sustainability, it can assure universal education, crime protection, medical care and a safety net for the needy. Bigger government will not necessarily be needed to assure a decent life, but government must become more resistant to political pressures of special interests running against the common good.

The public sector should establish ecological parameters (as to resources and environment) within which a free economy will operate. It should have the power to prevent excessive consumption of scarce resources. It must have the ability to demand reimbursement of real environmental costs of production. He proposes a "resource-use tax" and "pollution fees."

Since the imposition on our carrying capacity is determined by per capita consumption multiplied by the total number of people, Bueler also emphasizes the importance of a population policy.

His agenda primarily focuses upon narrowing the range of incomes to attain a level of sustainability.

"Bueler next identifies values, such as thrift, moderation and restraint as essential to the transition toward a sustainable state."

This requires steeply progressive taxes on higher incomes. He claims the "best way" to provide adequate incomes to all is to provide for a highly educated skilled work force in a non-growing population with a high demand for labor.

In closing, he cites policies that have been developed through a heightened self-interest, values based on sustainability and sufficient political will. Economic growth has not led to an improved lifestyle for all, but only for the few. It's time to build a better future based upon values and policies emerging from a recognition of limits.

The challenges in formulating an agenda for sustainable populations and economics will likely consume much of the intellectual capital in this nation for decades to come. The political will, community acceptance and degree of coercion will be influenced by our perception of limits. As we approach the bicentennial of the *Essay on the Principles of Population* by Thomas Robert Malthus, it might be an opportune time to sharpen our numeric skills. TSC

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A Social and Political Time Bomb

Book Review by B. Meredith Burke

> *We want to become a multiracial, multiethnic society ... without a dominant European culture.*
> — William Jefferson Clinton

Most readers of THE SOCIAL CONTRACT are aware that California has been a harbinger of the demographic transformation of the United States. Nearly eighty percent white in 1970 (with 90 percent of births occurring to native-born mothers), by 1996 the California population was officially 52 percent white. (Were all minorities and illegal residents counted, the author correctly notes, this percentage would fall below 50.) Births to white mothers (which, by 1990, had reattained their pre-1970 Baby Bust numbers before declining 20 percent in five years) were now only 36 percent of all births; births to Hispanic women were 45 percent. Nearly one out of two births was to a foreign-born woman, signifying that immigration was responsible for doubling the infant and ultimately the child (and student) population of the state. Demographically, as older cohorts die off, the state will increasingly reflect the racial and ethnic composition of today's births.

The Coming White Minority: California's Eruptions and the Nation's Future
by Dale Maharidge
New York: Times Books
320 pages, $25

Dale Maharidge rightly stresses that the political transition will lag several decades behind as those groups that underlie population growth tend to be ones with low proportions of citizens among adults and/or low turnout by members eligible to vote. He focuses upon the period 1992-1996, an interval when many of the white electorate became fully aware that demographically and socially they had lost control over their society's future. In his view the writing and passage of the ballot initiatives 187 (banning illegal entrants from most public services) and 209 (banning positive or negative discrimination towards any group) reflect the resistance of the white electorate and taxpayers to this changed reality.

For each of whites, Latinos (sic), blacks , and Asians, Maharidge presents both background history (state and local; of that group's first entry to California and its 1990s' situation) and a detailed portrayal of one individual. He follows the thoughts and deeds of a white moderate in southern Orange County (who arrived in California at age 17 when his parents moved from Pennsylvania); a Hispanic assemblywoman from a Los Angeles suburb (daughter of a Mexican father who arrived illegally as a child and granddaughter of a bracero farm worker brought here in the 1940s); a black police officer in Sacramento (a native of Arkansas who moved to California in the mid-1980s in hopes of a pro-football career, dashed when he suffered a physical injury); and a woman undergraduate at UCBerkeley (brought here at age six when her Chinese parents arrived from Vietnam in 1980). The families of none of these main personae reached California until after World War II, indeed three of the four arrived only after 1965 with its sea change in U.S. immigration policy and flow.

In the second section of this book the author describes some of the tension-exacerbating acts that frightened and alienated the still-white majority: not just the Rodney King beating, but the perceived increase in crime in general, associated with the newcomers. The education sector (supported by

B. Meredith Burke, Ph.D., *an economist and demographer, researches and writes on California fertility and population changes. She was a visiting scholar at the Hoover Institution, Stanford University, 1996-97.*

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taxes from private business and affluent mainly-white families) displayed sit-ins and hunger strikes by (he stresses several times) a small minority of Hispanic students at UCLA and UCBerkeley who demanded a Chicano Studies department — even as the UC system was experiencing sharp budget cuts, and UCB a loss of 9 percent of its faculty positions. The eclipse of white enrollment at elite public schools (Lowell High in San Francisco and UC Berkeley) by Asians has not (yet) occasioned a strong reaction by whites, possibly because the whites feel the Asians have worked hard in school — frequently at the expense of non-academic activities whites value.

"[The author] warns against demonizing members of the white population who have seen a racial transformation of their society unprecedented in modern peacetime history."

The proximity of Mexico to the United States as well as the on-going Mexican population explosion (even if fertility fell to replacement level immediately, the youthful age structure guarantees the Mexican population would more than triple before stabilizing — and current fertility is at least 50 percent above that — if not more, especially if births occurring in the U.S. to Mexican-born women were added back in) have engendered more serious fears of cultural and demographic displacement. The Aztlan political movement calling for a taking back of "Mexican territory"; the waving of Mexican flags at an anti-Proposition 187 rally; and the cultural clashes between the Anglo lifestyle and use of public space (my words, not his) and the very different ones of Mexico have aroused the white community.

The third and briefest section of the book considers the implications of the passage of the two propositions and the likelihood of attaining a successful polyethnic society.

Dale Maharidge is a Pulitzer Prize-winning journalist who has written an extremely readable book. He has undertaken impressive amounts of both library research and the qualitative interviewing which is a necessary though not sufficient element in correctly interpreting factual data. He warns against demonizing members of the white population who have seen a racial transformation of their society unprecedented in modern peacetime history. He chides the media for their evading "the nuances of race" and of toning down news articles to avoid giving offense to any group, rather than honestly exploring what kinds of experiences and perceptions lead to the views being voiced.

Yet, sadly, he has committed much of what he warned against. His selection of material precludes his depicting a full (or fuller) picture of a society whose elected leaders adopted policies that the electorate repeatedly rejected in polls. His personal ideological stances reflect (as he says in his acknowledgments) "the voice of social justice from Sister Ruthmary Powers, a nun from grade school whose influence has been felt ever since."

Even as he depicts increasing polarization and segregation among the four major ethnic/racial groups in the California of the 1990s, he views with optimism the evolution of a multicultural society. He ignores some of his own insights as well as quotes from informants when they will not support his pre-ordained interpretations. He is almost willfully oblivious, therefore, to numerous inconsistencies in his own text and his own thinking.

1. He uncritically accepts that whites and native-born nonwhites will not perform farm work nor low-skilled service jobs, and that the U.S. must keep tapping sources of low-paid labor. Yet he notes that his white informant returned from a visit to Wisconsin marveling that the entire gamut of jobs was filled by white workers, including teenagers. He never asks whether teenage, especially black teenage unemployment rates would be as high as they are, if there were no pool of low-skilled, English-deficient immigrants to exploit. He ignores the displacement in Los Angeles of unionized black janitors by mainly illegal Hispanics. He claims that without cheap (largely illegal) immigrant labor we would be paying $2 for a tomato, $5 for a pound of sugar. He never discusses demographic factors that have undone all of Caesar Chavez's work in trying to unionize farm workers to demand better wages and conditions. Maharidge is unaware of UCDavis agricultural economist Philip Martin's calculations that paying

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farm workers living wages would add under five percent to a family's grocery bill.

2. Hence he has bought into what I have called elsewhere "the perpetual motion model of population." Maharidge never considers that a labor shortage will compel improved wages and work conditions and a more productive use of labor, and mitigate the growing income inequality in this country. Moreover, the distribution of intelligence among our species guarantees that there will always be people who cannot become white-collar workers. In the author's model, within a generation of living in post-industrial America, all families and individuals will aspire to be college-educated and, therefore, we will need a steady stream of entrants from less developed economies. Within a generation, of course, these persons will no longer deign to perform those jobs, and we must import more.

3. The writer of this review suggested to Maharidge while he was researching this book that we meet so I could show him some of the data I was analyzing. He never called back. I might have saved him from the more common errors in demographic analysis, such as comparing the annual intake of newcomers with the base population instead of as a proportion of population increase, and ignoring their births altogether. I would have pointed out that both the world and America's population base and absolute increases are very different than they were 100 years earlier. I might have sensitized him to environmental and resource concerns (he does not mention these once), or what urban life will be like as the major ports of entry approach and exceed 20, then 30 million people under current demographic trends. I might also have pointed out to him how increasingly vulnerable we will be to major natural catastrophes, including the inevitable magnitude 8 or 8+ quake. I would also have instructed him on the significance of the 20th century industrial transformation in this country and how the educational and occupation dissimilarities between sending and receiving nations have escalated.

4. Perhaps to reassure his audience, Maharidge several times states that "of course" there has to be some immigration policy and that the U.S. has the right to limit its intake of newcomers. Yet he never discusses what factors should shape such a policy, nor what opinion polls have shown the American public desires in this arena. He does make many references to the Chinese Exclusion Act of 1882 and to the "Gentleman's Agreement" of the same era between the U.S. and Japan by which Japan agreed to curtail emigration of its citizens. In his mind a United States that no longer has a frontier is morally obliged to take in newcomers from those countries that were excluded a century ago — countries that at the Rio Environmental Summit assailed the U.S. for its disproportionate resource consumption. He never acknowledges birthright Americans' fears of environmental degradation from population growth (fears the President's Commission on Population Growth and the American Future found totally justified in its 1972 report). He never once seeks an explanation for the voter propositions he so disparages in the fact that this was the one avenue Californians had to try to hand back to Washington the costs imposed upon the state by the actions of the federal government (immigration policy is a federal responsibility). Maharidge, like the media colleagues he disparages, has to attribute opposition to present-day immigration solely to racism and a fear of loss of cultural hegemony.

"[Maharidge says] ...there has to be some immigration policy ... the U.S. has the right to limit its intake of newcomers. Yet he never discusses what factors should shape such a policy, nor what opinion polls have shown the American public desires in this arena."

5. Maharidge writes: "Over the course of American history, many writers, historians, and others have pointed out that the United States has never really established its identity (pp.295-296)." I was sharply taken aback by this assertion. As a child of the immediate post-World War II era, I thought there was a fair societal consensus on what an "American" was — and that films like "Home of the Brave," the

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1950's renewed civil rights drive and the 1960's revived feminism emanated from a desire for perfectibility: to make the real day-to-day society more closely resemble that of our ideals of equality under the law. Civic betterment in fact has a long history in this country. It was also a given that we were an overseas extension of Western European society and the Western philosophical tradition. What proved to be forty-five years of low immigration enabled Polish, Italian, and Irish Catholics; Western and Eastern European Jews; and the English, German, and Scandinavian Protestants to meld first with themselves, then beginning around 1970 with each other. Intermarriage rates shot up sharply at that time. Sociologically this signifies that group members perceive a commonality of values and social behavior.

If Maharidge thinks that post-World War II Americans were ill-defined, how can he explain the fact that Canadians of that era contrasted their own lack of strong national identity with the strong one they perceived in their southern neighbor?

I readily concede that the shifts precipitated by demographically-naive legislators are even now evoking calls for an altered American identity. I do not foresee the crafting of a panethnic identity. "The tipping phenomenon" Maharidge cites (the amount of heterogeneity a group will tolerate in a community before its members feel uncomfortable) is already evident in patterns of white internal migration. The disintegration of the former Yugoslavia, Czechoslovakia, and Soviet Union along ethnic lines (leaving aside African and Asian examples) leaves me dubious that the forty-eight contiguous states will remain one polity. Twenty years ago I would have branded as insane, or as a sci-fi writer, anyone who might have imagined such a disintegration.

Despite the book's dust jacket claim that the contents voice the "middle ground" in the multicultural society debate, I cannot see it finding an audience among any of the groups working to restrict immigration. Its likely audience should be the "one world" or "open gates" readers who, like its author, will deny a polity has a legitimate right to demographic self-determination. Reading uncritically, such an audience is unlikely to note the population/environment clashes, or to ask if political history affords (m)any examples of a peaceable shift of power and basic culture? Maharidge himself would benefit the most from a critical reading of his book. If he could become sensitized to his own inconsistencies I would feel a bit more optimistic about the country's future. TSC

Revolution from the Middle

A Collection of Essays
by Samuel Francis, Ph.D.

"[We must understand that the dominant social and political elites in the U.S. today] not only do nothing to conserve what most of us regard as our traditional way of life but actually seek its destruction or are indifferent to its survival. If our culture is going to be conserved, we need to dethrone the dominant authorities that threaten it."

So says Sam Francis in "Winning the Culture War," one of the 29 essays in this collection.

Others include such provocative chapters as "The New Nationalism," "This Land Ain't Your Land," "Culture and Power," and "America First." All are reprinted from *Chronicles* where they were first published between 1989 and 1996.

Revolution from the Middle
250 pages
$6.95

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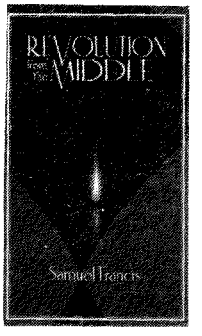

"The globalist agenda includes not only continued U.S. intervention in and management of foreign events but also the diminution or abolition of the United States itself as a sovereign nation, an autonomous economy, and a distinctive culture."

— from "America First" in
Revolution from the Middle, p.105

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The Big Squeeze

Middle America trapped by elite's programs

Book Review by Michael W. Masters

Behind the scenes and quietly, a social, political, economic and cultural struggle is taking place for the future of America, and indeed of all the West. This clash will define what kind of world we live in, who will rule over it, and even who will inhabit it. As others have observed — notably Oswald Spengler (*The Decline of the West*), James Burnham (*The Suicide of the West*), Garrett Hardin (*The Limits of Altruism*), and Jean Raspail (*The Camp of The Saints*) — it will ultimately determine the future of Western civilization and its founding people.

The conflict is largely hidden from view, primarily because the actors on one side — anti-nationalist in their outlook — do not particularly wish their goals known to the other side: the great majority of ordinary middle and working class Western people. Deprived of vital information, most Americans are largely unaware of this "culture war" — and are unprepared to wage it.

Revolution from the Middle
by Samuel Francis
Middle America Press
P.O. Box 17088, Raleigh, NC 27619
250 pages, paperback, $6.95

No one has more accurately depicted the nature of this struggle than author and syndicated columnist, Dr. Samuel Francis. Francis, who borrowed the term "managerial elite" from James Burnham to characterize this globalist group, paid a heavy price for violating the taboos surrounding the struggle: dismissal from the supposedly "conservative" newspaper, *The Washington Times.*

His situation validates a point he makes in his new book, *Revolution from the Middle,* namely: the terms "liberal" and "conservative" have lost their meaning. Indeed, leaders of the so-called conservative movement — both those who focus on economic issues ("neo-conservatives") and those who focus on social issues (e.g. the "religious right") — have fully embraced the universalist premise that undergirds the political left's mega-state and its legal and social apparatus. Significantly, it was Francis' exposure of the Southern Baptist Convention's universalist activities that first brought retaliation by *The Washington Times,* and it was his explicit defense of America as a predominantly European nation that provoked his involuntary departure.

Immigration is a potent weapon for imposing universalist dogma, as Francis notes:

> *Mass immigration is also perhaps the most useful instrument by which the very idea of nationality can be liquidated, and it thus fits well with the forces of economic and political globalism and with the interests of the emerging transnational elite, into which our own technocrats are fusing. As national populations and the cultures they carry become interchangeable through migration, the concrete meaning of citizenship, political loyalty, sovereignty, and other elements of nationality will yield to a new supranational regime over which the emergent elite presides.*

The assault on the historic community of European peoples, united by centuries-old ties of shared culture (a community Francis forthrightly identifies as "white"), has levied a heavy toll:

> *The absence of shock from whites themselves at their imminent demographic demotion is perhaps not all that surprising. ...[S]o permeated are our minds with the fantasy that all cultures, races, and ethnic groups are the same, that a member of one group can as easily doff his culture and put on a new one as he can strip off a T-shirt, that most Americans who were aware of the impending demographic revolution probably didn't see why it made much difference.*
>
> *Nevertheless, it does make a difference — probably more difference than any of the various political,*

Michael W. Masters *writes on issues of sociobiology and its relation to politics.*

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economic, and social changes the United States has ever experienced.... [T]he principal cause of the demographic revolution is immigration and the differential in birth rates between non-white immigrants and white natives of the United States. The main thing Americans must do to preserve their civilization and the ethnic base on which it is founded is to stop immigration, especially from countries that do not share the ethnic and cultural heritage of the historic core of the nation.

Francis repudiates those who preach "diversity" without pausing to examine the examples already before us or to consider the implications of that diversity on the future our children will inherit.

The loss of political power by what the Census Bureau calls "non-Hispanic whites" as they dwindle from a majority to a minority is only the most apparent such change, and it is hardly unreasonable to expect that what will follow from the transfer of power will be the outright dispossession and political and legal persecution of the white minority by a non- white and non-Western majority that has ... little love for whites or the West. Indeed, we already see the beginnings of that dispossession in affirmative action programs, hate crime laws, multiculturalist curricula, calculated insults to and vituperation of whites, and the proliferation of racially motivated atrocities against them.

Americans will ultimately pay a heavy price for listening to the siren song of universalism:

Yet while the demotion and dispossession of the groups that created, ruled and sustained American civilization may effectively decapitate the civilization, the importation of non-Western habits of thought and behavior will very likely simply kill it outright.... Indeed, the very term "nation," derived from the Latin word for being born, will become meaningless when tens of millions are not born within the country's borders.

Jean Raspail's surreal vision of a too- compassionate West overrun by the Third World is nearing reality, albeit for reasons altogether more sinister than the excess of kindness Raspail envisioned. Although America's leaders control the levers of a military machine the might of which has not been seen since Rome, they seem, in George Kennan's words, "unable to defend [America's] southwestern border from illegal immigration by large numbers of people armed with nothing more formidable than a strong desire to get across it."

Francis explains the contradiction: the elite are not indifferent to this situation — they are its proximate cause:

The mega-state ... will not preserve a civilization or a nation whose founding demographic core is facing a slow extinction and whose leaders have forgotten what civilization means and have come to regard their own nation as a barrier to be broken down and discarded.

The elites' ambition is often cloaked in self-serving humanitarian attire. Thus one finds Donald Fites, CEO of Caterpillar, Inc., piously betraying his own workers: "There is a narrowing of the gap between the average American's income and that of the Mexicans. As a human being, I think what is going on is positive. I don't think it is realistic for 250 million Americans to control so much of the world's G.N.P." The failure of Mr. Fites' workers to storm the ramparts of his golden Bastille reflects the deadening impact of decades of universalist dogma.

The secret of the elites' hold on power is their use of the underclass — a Marxist proletariat constantly swelled by Third World immigration — as a cat's paw to dominate and exploit the middle class: "[A] vast amount of money, energy and attention is devoted to the underclass, not to Middle Americans, who nevertheless are expected to pay for the underclass as well as for the elite and the programs that support it. The mega-state, then, as it is presently structured, is an apparatus that largely serves the interest of the elite and its underclass ally, at the expense, material and cultural, of the middle class."

Relentlessly squeezed from above and below, what is needed is a "Revolution from the Middle":

The first thing we have to learn about fighting a culture war is that we are not fighting to 'conserve' something; we are fighting to overthrow something. . .[W]e must understand clearly and firmly that the dominant authorities in the United States ... not only do nothing to conserve what most of us regard as our traditional way of life but actually seek its destruction or are indifferent to its survival. If our culture is going to be conserved, then, we need to dethrone the dominant authorities that threaten it.

TSC

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The High Cost of IRCA Amnesty

Price of the 1986 legalization keeps climbing

Report Review by Wayne Lutton

Measuring the Fallout:
The Cost of IRCA Amnesty after Ten Years
by David Simcox
CIS Backgrounder No. 1-97
Center for Immigration Studies
1522 K Street, N.W.
Washington, D.C. 20005-1202
(202) 466-8185

In this study, David Simcox attempts to measure the major dollar costs associated with the amnesty program that was a key provision of the mis-named 1986 Immigration Reform and Control Act (IRCA). Thanks to the amnesty program, which came within six votes of being killed in the House of Representatives, more than 2.7 million illegal aliens were permitted to remain in the United States and begin the process toward full citizenship.

Simcox finds that over the past ten years, amnesty has cost U.S. taxpayers $78.7 billion (substantially higher if measured in 1997 dollars), with costs still accumulating. Direct costs include estimates for 20 federal, state, and local assistance programs used by amnestied aliens, such as Medicaid, Aid to Families with Dependent Children, Supplemental Security Income, food stamps, school breakfast and lunch programs, publicly assisted housing, job training, public education, criminal justice costs, and Earned Income Tax Credits, etc. Indirect costs include services for American workers displaced by amnestied aliens as well as education and other services provided to the children of amnestied illegals. According to Simcox, this represents a government subsidy of $29,148 for each illegal alien who enrolled in the amnesty program.

This report indicates that IRCA critics' fears were justified. "The amnestied population brought little human capital," Simcox notes. Only 28 percent of the legalized aliens over 24 years of age were high school graduates and 55 percent had never attended high school. By 1992, only 27 percent of the Mexicans amnestied reported being able to speak English well. Amnestied aliens continue to earn wages well below the national average.

The *demographic* "costs" are undoubtedly much higher. More than 85 percent of the 2.7 million legalized were from Latin American countries, with Mexico and Central America accounting for nearly 84 percent of all legalizations. These folks are now inviting their relatives to legally enter the U.S., thus launching the wave of "chain migration" that is transforming parts of the United States. Fifty-three percent of all legalized aliens, with their large and growing families, settled in California.

Simcox points out that women in the now-legalized population had an estimated *1.25 million* citizen children through 1996. Public education and three major public assistance programs to citizen children 18 and under amounted to $36.1 billion in the decade since amnesty.

Since the 1986 IRCA, illegal immigration has continued and, according to the Immigration and Naturalization Service, now exceeds five million. (Other knowledgeable critics place the total much higher.) Border controls remain weak. Few resources are devoted to interior enforcement and employer sanctions. In addition, Attorney General Janet Reno has made it clear the Justice Department has no intention of deporting large numbers of more recently-arrived illegal aliens.

Simply stated, under current immigration policy, if a foreigner can get across the border or enter through an air or sea port, he or she has scored a touchdown and is practically home free. TSC

Wayne Lutton, Ph.D., *associate editor of* THE SOCIAL CONTRACT *and co-author, with John Tanton, of* The Immigration Invasion, *writes frequently on immigration and issues concerning American culture.*

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Bulletin Board

The INS Fact Book

The Statistics Division of the Immigration and Naturalization Service each year produces a handy pocket-size distillation of facts and figures that is available free for the asking. Contact the Headquarters Office of Public Affairs at (202) 514-2648. An order can be recorded on an answering machine at 1-800-755-0777.

Immigration on the Internet

THE SOCIAL CONTRACT journal and THE SOCIAL CONTRACT PRESS are on the internet. Our address is: **www.tscpress.com**. Our home page gives our mission statement, information about THE SOCIAL CONTRACT, a list of books for sale, editorials from several immediately previous issues which highlight the contents of each, plus the internet addresses of other groups working on immigration reform, population control and national unity questions.

This home page also hosts the newsletter of the Biocentric Institute edited by William Dickinson.

In addition, here are some other sites that readers may be interested in exploring:

- Philip Martin publishes *Migration News* and can be reached at <migration.ucdavis.edu>.
- Professor Norman Matloff has many articles and a great deal of data at: <heather.cs.ucdavis.edu/pub/Immigration/Index/html>.
- Joseph Daleiden heads the Midwest Coalition to Reform Immigration and his web site is: <www.enteract.com/~mcri97>.
- Glenn Spencer leads Voices of Citizens Together and their web site is <www.instanet.com/~vct>.
- *People and Place* is a journal published by the Centre for Population and Urban Research at Monash University in Australia. They can be reached at <www.swin.edu.au/sbs/pub/pnp>.
- *Mankind Quarterly* — <mankind.org>.
- The Aztlan Organization is at <aztlan.org>.
- <fedpub.com/immigration> brings up Federal Publications, Inc. which has a sub-heading for developments in immigration law.
- The American Immigration Lawyers Association hosts a site at <aila.org/home.htm>.
- <cofcc.org> reaches the Council of Conservative Citizens.
- <lra.com/swtaboo/index.html> is based on Garrett Hardin's idea of "stalking the wild taboo."
- "Immigration by the Numbers" continues the thrust of Roy Beck's video at <numbersusa.com>.
- <amren.com> reaches American Renaissance.
- *Politically Incorrect — An On-line Magazine* is at <cyad.com/cvgi-bin/pinc/july97/index.html>.

E-mail addresses for pertinent organizations:

- <fair@fairus.org> The Federation for American Immigration Reform (FAIR)
- <center@cis.org> Center for Immigration Studies (CIS)
- <103527.3545@compuserve.com> Negative Population Growth (NPG)
- <ccn@igc.apc.org> Carrying Capacity Network (CCN)
- <caps@calweb.com> Californians for Population Stabilization (CAPS)
- Philip Martin of *Migration News* can be reached at <migrant@primal.ucdavis.edu>
- And, of course, THE SOCIAL CONTRACT's e-mail address: <soccon@freeway.net>.

Affirmative Action Update

Writer Jim Robb's article for the Winter 1995-1996 issue of THE SOCIAL CONTRACT (Vol. VI, No.2) has opened significant debate on the issue of affirmative action for immigrants. Add your comments at a web site dedicated to that topic: www.netcom.com/~jimrobb. TSC

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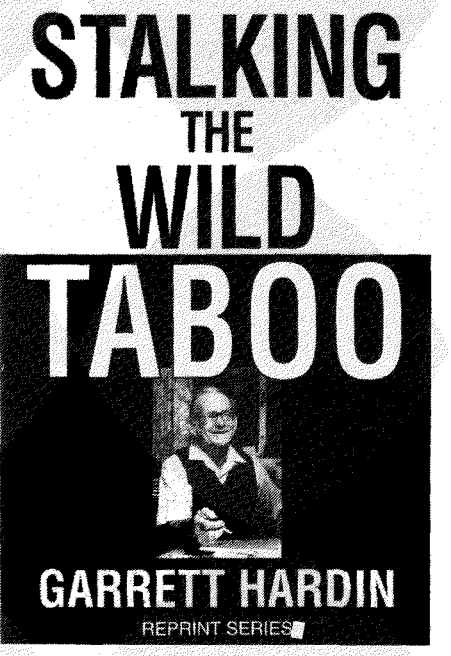

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